

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 23

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 March 1, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr. Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.
16 Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,
17 Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan Villa,
18 Ms. Justine Fox-Young.

19 Jennifer Bean, FAPR, RDR, RMR, CCR
20 United States Court Reporter
21 Certified Realtime Reporter
22 333 Lomas, Northwest
23 Albuquerque, NM 87102
24 Phone: (505) 348-2283
25 Fax: (505) 843-9492

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1	I N D E X	
2	EXAMINATION OF JAMES MULHERON	
3	By Mr. Villa	7558
4	By Mr. Beck	7582
5	By Mr. Villa	7595
6	By Mr. Beck	7597
7	By Mr. Villa	7599
8	By Mr. Beck	7603
9	By Mr. Villa	7609
10	EXAMINATION OF ANTHONY ALEXANDER ROMERO	
11	By Mr. Beck	7628
12	EXAMINATION OF WENDY PEREZ	
13	By Ms. Armijo	7642
14	By Ms. Fox-Young	7662
15	By Ms. Armijo	7681
16	EXAMINATION OF JOSEPH SAINATO	
17	By Ms. Jacks	7710
18	By Ms. Bhalla	7717
19	By Mr. Villa	7757
20	By Ms. Duncan	7775
21	By Ms. Jacks	7779
22	By Ms. Duncan	7810
23	By Ms. Jacks	7829
24	By Mr. Castellano	7847
25	By Ms. Armijo	7871

1	REPORTER'S CERTIFICATE	7884
2	EXHIBITS ADMITTED	
3	Defendants' L Admitted	7768
4	Defendants' M Admitted	7774
5	Defendants' R Admitted	7814
6	Defendants' M, N, O, P and Q Admitted	7815
7	Defendants' S and T Admitted	7816
8	Defendants' H Admitted	7871
9	Defendants' A-G, I, J, and K Admitted	7880
10	Government 1 Admitted	7870
11	Government 789, 788, and 694 Admitted	7681

12
13
14
15
16
17
18
19
20
21
22
23
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 THE COURT: Good morning, everyone. I
2 appreciate everyone being here, ready to go, and on
3 time a little early. Let me make a couple of
4 announcements, then I need to hear from some folks.

5 First of all, I am going to send back to
6 Albuquerque -- and, in fact, we've already done
7 it -- my draft jury instructions. So you should
8 have a clean set around the noon hour, I would hope,
9 or 1:00, somewhere in there, for us to pass out.

10 And so what I'd like to maybe do is ask
11 y'all to maybe have a letter to me, of some sort, a
12 joint letter, or something -- I'll take anything
13 from anybody, any combination, by about 7:30 in the
14 morning, so you'll be able to look at it this
15 afternoon, overnight, and send me something so that
16 I can make some changes in the morning, and we'll
17 just see where we are.

18 Let me also note something. We worked --
19 Ms. Standridge was in here very early this morning
20 with the IT people, as far as getting material on
21 the JERS system back there. The Government had
22 Exhibit 164 on its list, but it was never admitted.
23 So it was admitted as Defendants' Exhibit -- is that
24 E11?

25 THE CLERK: EU.

1 THE COURT: EU. Okay. So Exhibit 164
2 will not appear on JERS as 164. It will only appear
3 as Defendants' Exhibit EU; is that correct? All
4 right. So even though it's on the list, it's not
5 being admitted, and wasn't admitted, and I think
6 everybody agrees on that. But the same document was
7 admitted as Defendants' Exhibit EU and it will show
8 that on the JERS system.

9 THE CLERK: Correct.

10 THE COURT: Right. All right.

11 MS. FOX-YOUNG: On that --

12 THE COURT: Hold on. There is a line here
13 of people that need to talk.

14 MS. FOX-YOUNG: I'm sorry.

15 THE COURT: Ms. Bhalla, either you or Mr.
16 Lowry were not able to finish something before we
17 took a break. Do you want to -- all right, Ms.
18 Bhalla?

19 MS. BHALLA: Your Honor, I want to make
20 record about the discovery that was disclosed from
21 the box yesterday that Agent Stemo testified about.
22 It was -- we counted it last night -- it was 981
23 pages. And, unfortunately, this material was, in
24 fact, relevant to the impeachment of several
25 witnesses.

1 The testimony was that this was a box of
2 Mario Rodriguez' property. Property belonging to
3 other inmates who are testifying in this case were
4 in the box. One of those was a letter from Timothy
5 Martinez' wife to Timothy Martinez, explaining that
6 the stories weren't matching up; that they needed to
7 work on how they could do that.

8 And I'm going to try to admit these when
9 we get them a little more organized, Your Honor.
10 We're doing the best we can, processing this at this
11 late time. But it begs the question of why did
12 Mario Rodriguez have cooperating witnesses'
13 property, including personal letters, in this box?
14 Or was this information that pertained to all the
15 cooperating witnesses?

16 There appears to be some sort of FBI field
17 notes, which I don't remember seeing in discovery in
18 this box, that details the number of informants, the
19 number of charges, the number of wiretaps, the
20 number of arrests, the number of ELSUR devices out
21 there. I mean, you know, this was in this box.

22 The notes that were provided in discovery
23 detailing what we've seen on the video was in there,
24 which was not something -- there was no paper
25 discovery in this case. So why Mario Rodriguez has

1 this stuff in his box, detailing what was seen on
2 the video -- there are multiple letters from Mr.
3 Martinez' wife. There is commissary forms belonging
4 to Mauricio Varela.

5 There is a letter to the clerk's -- two
6 letters to the clerk's office from Mario Rodriguez
7 requesting discovery in another homicide. We did
8 some investigation into that homicide, and it
9 appears that Lupe Urquizo may have provided
10 testimony in that case. And this is after the
11 Javier Molina murder.

12 This whole case is about whether or not
13 someone passed this paperwork to Mario Rodriguez,
14 and he's sending letters out to different clerk's
15 offices requesting specific discovery, and making
16 allegations that the cases are his, and that's why
17 he's entitled to the discovery, which we know is not
18 true. We think that's relevant.

19 There's almost thousands of handwritten
20 notes by Mario Rodriguez detailing other crimes,
21 other assaults, specifically what happened with the
22 rape case, that he does, in fact, have to register
23 as a sex offender, which he testified was not true.

24 I think the most disturbing thing we found
25 was personal information that he handwritten notes

1 about other cooperating witnesses' personal
2 information, including their home addresses, their
3 families' addresses, Social Security numbers. It
4 appears that he has a federal judge's home address
5 in here.

6 And, you know, I understand that Ms. Stemo
7 wasn't the primary case agent, and I don't think
8 that she deliberately misrepresented anything to the
9 Court about the contents of the box. But the fact
10 remains that the contents of the box were material
11 to the defense. And the Government has rested. And
12 they involve more than just Mario Rodriguez.

13 And so at this time, Your Honor, we're
14 asking for a dismissal, at least for Carlos Herrera,
15 and for a mistrial. To ask us to try and process
16 all of this information after the Government has
17 rested, and to make a determination about what we
18 need do at this point is just -- it's just patently
19 unfair, Your Honor.

20 THE COURT: All right. Thank you,
21 Ms. Bhalla.

22 MS. JACKS: Ms. Bhalla, would you put on
23 the record how many pages were in the production
24 produced yesterday afternoon?

25 MS. BHALLA: I did. It's 981.

1 MS. JACKS: Thank you.

2 THE COURT: Let me hear from Mr. Lowry.
3 He wanted to finish up something the other day -- or
4 yesterday. And I caught most of what he had, but he
5 had something else he wanted to say there.

6 MR. LOWRY: We touched on it briefly, and
7 I think the Court had ordered the Government to
8 produce the field notes, the interviews, the
9 complete interviews of the three witnesses that
10 would have been involved with this conversation that
11 took place between Lupe Urquizo and Timothy Martinez
12 and Mario Rodriguez, when Mr. Urquizo apparently
13 arrived at Southern facility. The Court ordered the
14 Government to disclose them either to me or the
15 Court.

16 Mr. Beck started the disclosure last
17 night, but, Your Honor, you know, having just
18 touched upon them -- and I haven't -- we've been
19 processing the other information with my colleagues
20 with regard to Mario Rodriguez. But it appears that
21 those notes were exculpatory, and although we can't
22 definitively pinpoint with accuracy, without some
23 more help from the United States, which notes went
24 to which interview, it looks as though those notes
25 from various FBI agents show that Mr. Urquizo

1 claimed during his initial debrief that Mr. Baca had
2 said, "Don't kill Mr. Romero, don't even stab him,
3 just rough him up," which is the exact opposite of
4 what he testified to on the stand.

5 So it appears as though the United States
6 was in a position to know that Mr. Urquizo was
7 perjuring himself on the stand, yet did nothing to
8 correct that.

9 So we're still processing this
10 information, Your Honor, but it is a serious matter
11 that we're going to have to look at more closely.

12 THE COURT: All right. Thank you, Mr.
13 Lowry.

14 Mr. Beck, let me -- Ms. Fox-Young was next
15 in the queue. So Ms. Fox-Young?

16 MS. FOX-YOUNG: Your Honor, it's on the
17 subject of exhibits that haven't been admitted, and
18 I'm working with the Government to figure out if we
19 have a complete version. So I'll wait on that.

20 THE COURT: Are you worried about the
21 Government's list being accurate?

22 MS. FOX-YOUNG: Mario Rodriguez' plea
23 addendum was not admitted, and the Government has
24 represented they don't have a signed one. We don't
25 know why there isn't a completely signed one, and

1 we're trying to track it down.

2 THE COURT: Do you think I have one on
3 CM/ECF in a sealed form?

4 MS. FOX-YOUNG: Ms. Armijo tells me it
5 wasn't filed.

6 THE COURT: All right. So do you need
7 anything from me on that right now?

8 MS. FOX-YOUNG: No, Your Honor, thank you.

9 THE COURT: Mr. Beck?

10 MR. BECK: Your Honor, I read through the
11 981 pages last night. And I won't say that it was
12 an easy task. I think everyone would agree Mario
13 Rodriguez is a pretty prolific writer.

14 There is information over there -- there
15 is information in there that we turned over
16 immediately, because I could see, putting myself in
17 the defense shoes, that I would want that. And
18 again, that's why, as soon as I flipped through it
19 the night before last, I said: We need to
20 immediately make copies, immediately produce those.

21 There is personal information in there
22 which we otherwise would have redacted, but we just
23 didn't have the time. And that personal information
24 is information about the other people in Mario
25 Rodriguez' state case for the Molina murder,

1 including other defendants, and that's probably the
2 judge whose address he has. It looks like he had
3 addresses and phone numbers and personal information
4 from everyone involved in that case, from the judge,
5 to the lawyers, to the defendants, to the witnesses.
6 So that is accurate.

7 I think that -- I think the agents did --
8 I think that Agent Stemo -- let me just say that
9 sometimes it's difficult for us to put ourselves in
10 other people's shoes and realize how information may
11 be put to use. I think that Agent Stemo did a fine
12 job. And I think the Mario Rodriguez letter that
13 was immediately produced Sunday night was probably
14 the most pertinent, which is why we turned that over
15 immediately.

16 The case is still ongoing. The United
17 States can reopen its case. Mario Rodriguez is
18 available to testify, Timothy Martinez is available
19 to testify. So if they want to use those materials,
20 they still have the ability to do so.

21 THE COURT: All right. Well, let me think
22 about it today. And everybody is looking at stuff.
23 Maybe we'll have a little better picture of where we
24 are as the case develops today. But --

25 All right. All rise.

1 MS. JACKS: I have a matter before the
2 jury comes in.

3 THE COURT: What's it relate to,
4 Ms. Jacks?

5 MS. JACKS: It relates to some exculpatory
6 evidence that the Government emailed to us last
7 night at 7:30, that states that Daniel Sanchez did
8 not participate in the Molina homicide.

9 THE COURT: All right. What do we do?

10 MS. JACKS: I just want to bring it to the
11 Court's attention. I'm preparing a written motion
12 to dismiss the case based on that. It's statements
13 of Lupe Urquizo that affects the cross-examinations
14 of every defendant -- I mean every government
15 cooperator that participated in the Molina homicide.

16 I want to bring that to the Court's
17 attention -- I'll file that this morning -- but
18 Mr. Jewkes and I would like a half an hour to
19 discuss the import of this and the Government's
20 email with Mr. Sanchez, and we haven't had that
21 opportunity this morning.

22 THE COURT: All right. All rise.

23 (The jury entered the courtroom.)

24 THE COURT: All right, everyone be seated.
25 Well, good morning, ladies and gentlemen. It's

1 March 1. Well, I don't know when the trial will
2 end, either, but I bet it's this month, don't you?

3 I appreciate the way you've gone about
4 your task, good natured you've been about it. And I
5 know people have suffered through some sicknesses
6 and illnesses and travel and everything. But you've
7 been a great bunch to work with.

8 And I appreciate the attorneys and the
9 parties for working so hard, too. A lot of times I
10 have to drag parties and counsel in, and that delays
11 the jury coming in. But they've been great, and
12 you've been great. And the Court really appreciates
13 it. It's made it a pleasure to work with all of
14 you.

15 All right. Do the defendants have their
16 next witness or evidence, Mr. Villa?

17 MR. VILLA: Yes, Your Honor, Mr. Perez
18 calls Warden James Mulheron.

19 THE COURT: Mr. Mulheron, if you'll come
20 up and stand next to the witness box on my right,
21 your left. Before you're seated, my courtroom
22 deputy, Ms. Standridge, will swear you in.

1 JAMES MULHERON,
2 after having been first duly sworn under oath,
3 was questioned, and testified as follows:

4 THE CLERK: State and spell your name for
5 the record.

6 THE WITNESS: James Mulheron, J-A-M-E-S,
7 M-U-L-H-E-R-O-N.

8 THE COURT: Mr. Mulheron.
9 Mr. Villa?

10 MR. VILLA: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. VILLA:

13 Q. Good morning, Mr. Mulheron. And could I
14 have you just adjust your mic just a little bit so
15 it's closer to you so we make sure everybody hears
16 you? Thank you, sir.

17 Will you tell the jury how you're
18 employed?

19 A. I'm employed as a warden at Southern New
20 Mexico Correctional Facility.

21 Q. And I think we know, but what is a
22 warden's job?

23 A. It's overall oversight of the facility,
24 security, budgetary.

25 Q. And that's the Southern New Mexico

1 Correctional Facility just down the road here?

2 A. Yes.

3 Q. How long have you been the warden?

4 A. Three years.

5 Q. Prior to that, what was your title?

6 A. Deputy warden.

7 Q. You were the deputy warden at Southern?

8 A. Yes.

9 Q. How long were you the deputy warden?

10 A. Approximately two years.

11 Q. Before that, what was your title?

12 A. STIU coordinator.

13 Q. As the STIU coordinator, which facility?

14 A. At Southern New Mexico.

15 Q. How long were you the STIU coordinator?

16 A. Approximately -- close to seven years.

17 Q. Were you a CO before that, or an STIU

18 before that?

19 A. I wasn't. Prior to that, I was a captain.

20 Q. Captain. Okay. When did you start with

21 the New Mexico Department of Corrections?

22 A. In 1993, in March.

23 Q. Did you start as a corrections officer?

24 A. I did.

25 Q. And then I guess you worked your way up to

1 get to the captain that we just heard about?

2 A. Yes. Through the ranks, yes, sir.

3 Q. Got it. Were you the warden, then, when
4 Javier Molina was killed on March the 7th, 2014?

5 A. No, sir, I wasn't.

6 Q. Were you deputy warden?

7 A. Correct, deputy warden.

8 Q. Now, at some point did you become acting
9 warden?

10 A. I did, in 2015.

11 Q. In 2015. So is that because the warden
12 had left, and then you were acting while a
13 determination was made who would be the warden?

14 A. That's correct, yes.

15 Q. And do you remember when -- what month
16 that was in 2015?

17 A. I believe it was in January.

18 Q. Okay. So the beginning of the year?

19 A. Correct, January or early February, I'm
20 not -- early in 2015.

21 Q. And just give me an idea of the difference
22 between -- I know the warden is sort of the boss.
23 How many deputy wardens are there?

24 A. The facility has three deputy wardens.

25 Q. And what are the deputy wardens' jobs?

1 A. It's depending on where you're assigned.
2 You have the deputy warden of operations, deputy
3 warden of administration, and then you have the
4 deputy warden of the Level 2 facility.

5 Q. And which deputy warden were you?

6 A. I was deputy warden of operations.

7 Q. Operations. So what does the deputy
8 warden of operations do?

9 A. Primarily, it's oversight of security at
10 the facility.

11 Q. Got it. So did you get involved, when you
12 were the deputy warden, in the investigation of the
13 Javier Molina homicide?

14 A. I did.

15 Q. Can you tell the jury just generally
16 speaking what you did?

17 A. Basically, I ensured that the crime scene
18 was secured and conducted a search of a program
19 area.

20 Q. Now, at some point in time, did you look
21 at the shanks that were alleged to be used in the
22 homicide?

23 A. I did.

24 Q. When did you do that?

25 A. I believe I was shown a picture of one of

1 them the night of the event.

2 Q. Okay. And did you help, in any way, to
3 try to investigate where those came from?

4 A. I did.

5 Q. Can you tell the jury, just generally,
6 what you did?

7 A. We went to the program area where there is
8 walkers and wheelchairs located.

9 Q. What program area was that?

10 A. It's called Wheelchair Restoration
11 Program.

12 Q. And the jury has heard a little bit about
13 that. Will you tell the jury what that program is?

14 A. Sure it's a program where the inmates
15 receive walkers and wheelchairs that are broken or
16 don't work, and they restore them to working
17 condition. After we typically get a load of 200, we
18 ship them to a third world country.

19 Q. And were there inmates in what the jury
20 has heard about, the blue pod, the yellow pod, and
21 green pod, where SNM members were housed, were there
22 inmates there that worked in the wheelchair program?

23 A. There was.

24 Q. Do you know how many?

25 A. I couldn't say for sure. I would guess

1 four or five.

2 Q. Why did you go to the wheelchair program
3 as part of your investigation?

4 A. Because the incident happened in that blue
5 pod. And I knew that inmates were employed in that
6 wheelchair program that also lived in blue pod. So
7 the metal -- what the shanks were made out of, I
8 thought may be consistent with something that's
9 located in the wheelchair program.

10 Q. And after you went to the wheelchair
11 program, what did you think?

12 A. I didn't locate anything that was
13 consistent with what the weapons were made out of.

14 Q. So then what did you do next?

15 A. I believe that was it for the evening.

16 Q. Okay. What was the next step, I guess, in
17 your participation of the investigation?

18 A. Sometime later, I guess maybe about a week
19 or so, I talked to Mr. Perez.

20 Q. You talked to Rudy Perez?

21 A. Yes.

22 Q. Okay. Now, I don't want get into what --
23 anything Mr. Perez told you, but can you tell the
24 jury why you decided to talk to Rudy Perez?

25 A. He had a walker.

1 Q. Mr. Perez had a walker?

2 A. Yes.

3 Q. And so what made you want to go talk to
4 him about the walker?

5 A. I -- we searched the wheelchair program
6 that night. We didn't find nothing consistent with
7 what the weapons were made off. So I wanted to view
8 Mr. Perez' walker to see if it was all intact.

9 Q. How did you know he had a walker?

10 A. Through past interactions with Mr. Perez.

11 Q. And just -- without getting into
12 specifics, what were those past interactions?

13 A. Probably interviews regarding previous
14 incidents.

15 Q. And when you say "previous incidents,"
16 what type of incidents?

17 A. Assaults.

18 Q. Now, not necessarily something done by Mr.
19 Perez, but an incident that happened that he may or
20 may not have been a witness to?

21 A. Right.

22 Q. Okay. Is that something you normally did,
23 if there was an assault or another incident,
24 interview inmates?

25 A. Yes.

1 Q. How long did you know Mr. Perez before you
2 went to interview him about his walker in connection
3 with the Javier Molina killing?

4 A. I couldn't say specifically. It was
5 sometime that Mr. Perez was at the facility, so --

6 Q. Now, you know that Mr. Perez had a walker,
7 and that's why you went to see him; right?

8 A. Yes.

9 Q. Were you aware of his disabilities or
10 problems that he had?

11 A. Nothing specific, no.

12 Q. Okay. Let me show you -- actually, it has
13 already been admitted into evidence -- Mr. Perez'
14 location history, which is Exhibit V24. Warden
15 Mulheron, you've seen these physical location
16 histories before?

17 A. I have seen them before.

18 Q. And you agree that this is Mr. Perez'?

19 A. I would.

20 Q. So let me just show you the time period of
21 October 2013. We'll blow it up for you. Do you see
22 it there on your screen?

23 A. I do.

24 Q. Okay. So does this document indicate
25 that -- it looks like October 3, 2013, Mr. Perez

1 came to the Southern New Mexico Correctional
2 Facility?

3 A. Yes.

4 Q. Is that consistent with what you remember?

5 A. I really don't remember when he showed up.

6 Q. Before that time, it looked like he was at
7 LTC, and -- over this 2013 period, and then UNM
8 Hospital. Can you tell the jury what LTC is?

9 A. It stands for Long-Term Care unit.

10 Q. What is that?

11 A. Inmates that have medical conditions that
12 don't necessarily require admission into the
13 hospital. But they need more intense medical
14 supervision or care.

15 Q. We've heard that referred to as like a
16 prison hospital; is that fair?

17 A. It's -- yes, that would be fair.

18 Q. So after -- according to this document,
19 after the prison hospital stay, Mr. Perez, on
20 October 3, 2013, goes to the Southern New Mexico
21 Correctional Facility?

22 A. Correct.

23 Q. And then it looks like the first day --
24 he's there October 3, he's in building SA-1, but pod
25 A, cell 105; right?

1 A. Yes.

2 Q. All right. And the A pod is which pod?

3 The color?

4 A. I'll guess -- not knowing specifically, it
5 would be green pod.

6 Q. Green pod, okay. Then the next day it
7 looks like he's moved to SA-1, B-114. Is B the blue
8 pod?

9 A. I would think it was the blue pod.

10 Q. And then it looks like maybe on October
11 21, 2013, he's then moved into cell 115 in the blue
12 pod, as well?

13 A. Correct.

14 Q. And it's not till after March the 7th he's
15 moved to a different building; correct?

16 A. Correct.

17 Q. Okay. So while -- and I'll leave this
18 document up here for just a minute, but I just want
19 to ask you a question.

20 While Mr. Perez was there, from October
21 through March 7, I assume that he's given some sort
22 of accommodations so he can have his walker with
23 him?

24 A. I wouldn't know.

25 Q. Okay.

1 A. I couldn't specifically say what
2 transpired with that.

3 Q. But you knew prior to the Javier Molina
4 killing, that Mr. Perez had a walker?

5 A. Yes, I did.

6 Q. Because you'd seen him with it?

7 A. Yes.

8 Q. And nothing ever came to your attention as
9 the deputy warden, one way or another, about where
10 the walker was being kept or what accommodations
11 were being made for Mr. Perez?

12 A. No.

13 Q. Now, it looks like on March the 8th, Mr.
14 Perez was moved over to SA-2. That's a different
15 housing unit than SA-1, where the blue pod is,
16 right?

17 A. Yes, it is.

18 Q. Okay. And then the next day, he's moved
19 over to a different pod, it looks like in SA-2, into
20 the A pod, 102?

21 A. Yes, it does.

22 Q. Now, you said within a week or so of the
23 Javier Molina homicide -- and if you don't know the
24 exact day, it's okay, you went to interview him.
25 Can you tell the jury if he was in SA-2C or SA-2A

1 when you went to see him?

2 A. I believe when I interviewed him he was in
3 blue pod.

4 Q. In which pod?

5 A. It was either blue or red pod.

6 Q. Okay. Now --

7 A. Yeah, I don't remember exactly which pod
8 he was. I was doing my rounds in that whole housing
9 unit.

10 Q. Was it the building, SA-2?

11 A. Yes, it was that building.

12 Q. When you say a housing unit, that's what
13 SA-2 is?

14 A. Yes, it is.

15 Q. What are your rounds?

16 A. The deputy warden or warden, you do weekly
17 rounds of the housing unit, especially the more
18 intense supervision units. And just -- you make
19 yourself available to the inmates or the staff.

20 Q. And are those some of the times, as well,
21 that you've spoken to Mr. Perez previous to this?

22 A. I could have. I don't remember
23 specifically talking to him during those rounds, but
24 it's possible.

25 Q. All right. In the previous times that you

1 spoke to Mr. Perez -- I don't want to get into
2 anything he's talked about. Not the time you talked
3 to him about Mr. Molina, but before, how did those
4 conversations go between the two of you?

5 A. Very brief and very short.

6 Q. Is it fair to say Mr. Perez didn't want to
7 talk to you?

8 A. I would say he didn't want to talk to me,
9 correct.

10 Q. Just getting back to the reason why you
11 went to go see Mr. Perez, after going to the
12 wheelchair program, you'd never had any issues with
13 Mr. Perez and his walker before; right?

14 A. That's correct.

15 Q. No one ever said that he tried to use
16 pieces from his walker to make weapons, or anything
17 like that?

18 A. No.

19 Q. Okay. You just went to the wheelchair
20 program, didn't see anything that looked like the
21 shanks, and thought to yourself, "I should go talk
22 to Mr. Perez," because you remembered he had a
23 walker?

24 A. Right. It was probably some days after,
25 that I remembered he had a walker.

1 Q. So when you went to go talk to Mr. Perez
2 about the Javier Molina homicide in building SA-2,
3 did he have the walker?

4 A. Yes, he did.

5 Q. Let me show you Government's Exhibit 89.
6 This has already been admitted as evidence. Warden
7 Mulheron, is this the walker?

8 A. I would say it is.

9 Q. Okay. And I'll show you Government's 90.
10 It's a different picture of the walker. Does that
11 look like the walker?

12 A. Yes, it does.

13 Q. Where were those pictures taken?

14 A. I believe they were taken in my office.

15 Q. Why do you believe that?

16 A. Because the walker was brought to my
17 office after I had talked to Mr. Perez.

18 Q. Okay. So you went to see Mr. Perez. He
19 had the walker, and in this picture, you can see
20 that -- I've circled here, looks like a cloth or
21 sheet or something tied around the -- either side of
22 the under parts of this walker. Was this the way it
23 looked when you went to see him?

24 A. Yes, it is.

25 Q. And was that significant to you?

1 A. It was.

2 Q. Why?

3 A. There should be a bar that runs from -- I
4 guess if you say, it would run from one sheet over
5 to the other sheet that would hold that in place.

6 Q. Okay.

7 A. So that bar being missing, it was tied up
8 with cloth to hold it in place.

9 Q. Now, Warden Mulheron, can you draw on your
10 screen -- if you just touch it -- can you just draw
11 a little line where you think that bar was missing?

12 A. (Witness complies.)

13 Q. Great, thank you. Now, again, don't tell
14 me anything Mr. Perez said. Did you ask him about
15 why that bar was missing?

16 A. Yes, sir.

17 Q. And without telling me anything that he
18 said, was he willing to talk to you?

19 A. He was more willing than he had previously
20 been, yes.

21 Q. And did he answer your questions, to some
22 extent, about why the bar was missing?

23 A. Yes, he did.

24 Q. Okay. When he was answering those
25 questions, what was his demeanor like?

1 A. He seemed unnerved. It wasn't his typical
2 behavior in my past dealings with him.

3 Q. When you say "unnerved," what do you mean?

4 A. Scared, worried. It was different.

5 Q. Okay. Different than you'd dealt with him
6 before?

7 A. Right.

8 Q. So you think -- I'll get back to that in
9 just a minute. But after you got done talking to
10 Mr. Perez, what did you do with the walker?

11 A. I had it brought up to my office.

12 Q. And who brought it to your office?

13 A. I believe it was the housing unit officer.

14 Q. Somebody took the photograph -- these two
15 photographs of it?

16 A. Yes. I contacted STIU, the intelligence
17 unit, and asked them to photograph the walker.

18 Q. Okay. What, then, did you do with the
19 walker?

20 A. I remember that it stayed in my office. I
21 didn't do anything with it after that.

22 Q. And at some point did the walker leave
23 your office?

24 A. It did.

25 Q. How did that happen?

1 A. I don't know.

2 Q. You don't remember?

3 A. No, I don't.

4 Q. Did the State Police or somebody come and
5 confiscate it as evidence?

6 A. Not that I'm aware of.

7 Q. Do you recall anybody from STIU coming to
8 confiscate it as evidence?

9 A. I don't.

10 Q. Okay. So it's fair to say you don't
11 remember what became of the walker?

12 A. Yes.

13 Q. All right. Did you instruct STIU to
14 conduct any more investigation in connection with
15 how the piece became missing from the walker?

16 A. I did. I contacted STIU Ernie Holguin,
17 and I asked him to do a follow-up interview with Mr.
18 Perez.

19 Q. A follow-up interview with Mr. Perez?

20 A. Yes.

21 Q. Do you know whether that interview
22 occurred?

23 A. I don't know. I'm assuming it did. I
24 believe it did occur.

25 Q. Did you ever see a memo from STIU Officer

1 Holguin about that interview?

2 A. I didn't get a memorandum, no.

3 MR. CASTELLANO: Your Honor, may we
4 approach?

5 THE COURT: You may.

6 (The following proceedings were held at
7 the bench.)

8 MR. VILLA: Your Honor, similar to STIU
9 Officer Holguin yesterday, Agent Mulheron would
10 testify that when he asked Mr. Perez about the
11 missing part of his walker, Mr. Perez said to him,
12 "No disrespect, but if -- they told me if I said
13 anything to anybody, I could be next." And that's
14 the statement that we intend to elicit from Agent
15 Mulheron.

16 I think it's Mr. Perez' then existing
17 state of mind about being in fear and what happened
18 when they took the walker from him. The statement
19 that was made to him, we presume it's made by Mario
20 Rodriguez. And, you know, we're not offering it for
21 the truth of what's in the statement. We're
22 offering it to show Mr. Perez' state of mind at the
23 time the walker piece was taken from him.

24 And also, as we argued yesterday, and I
25 incorporate all those arguments, impeaches all the

1 prior testimony of Agent Palomares, Billy Cordova,
2 and Mr. Perez himself. In fact, I've got the
3 real-time -- I left it at the podium, but I could
4 show it to you -- that Mr. Cordova testified that
5 Mr. Perez denied that he ever spoke to anybody or
6 spoke to STIU. And so this would impeach that
7 statement of Mr. Perez, as well.

8 MR. BECK: Your Honor, that statement
9 would not be admissible as a present state of mind
10 because it was taken at least a week afterwards.
11 According to Mr. Mulheron's testimony, there is no
12 indication of why, there is no indication it ties
13 his frame of mind to the time at which he gave up
14 the shank as opposed to a week later.

15 That statement also has hearsay within
16 hearsay, which they can't elicit because someone
17 told Rudy Perez. So to the extent it is his
18 statement, it's inadmissible hearsay. He's not a
19 party opponent. It's not impeaching any statement
20 of Mr. Mulheron, and they are offering it for the
21 truth of the matter asserted.

22 THE COURT: Defendants have anything they
23 need to --

24 MS. DUNCAN: On behalf of Mr. Baca, we
25 object. This is clearly a testimonial statement to

1 a law enforcement officer after the murder. And it
2 would violate Mr. Baca's rights. And it is hearsay
3 being offered for the truth of the matter. We'd ask
4 the Court to exclude it.

5 MS. JACKS: Mr. Sanchez joins. And the
6 Court made a pretrial --

7 THE COURT: I sat down last night after
8 yesterday's testimony and -- also anticipating this
9 morning's testimony -- and reviewed my thoughts on
10 this evidence. Again, I think this is the kind of
11 thing that defendants try to get their clients'
12 statements, the defendants' statements in, when
13 they're not testifying.

14 The Federal Rules of Evidence seem to
15 block this. This is not something that comes under
16 any exception. And I scrutinized it before trial.
17 I scrutinized it yesterday, and scrutinized it again
18 last night. I think at this point, I have indicated
19 that Mr. Perez should not be eliciting his own
20 statements through other witnesses, if he's not
21 going to take the stand.

22 And it doesn't fit within the hearsay
23 exception. I'm not seeing it as being impeachment,
24 direct or otherwise, of other statements. So I'm
25 going to sustain the objection and exclude the

1 question of Mr. Mulheron as to the statements of Mr.
2 Perez.

3 MR. BECK: Also, Your Honor, Mr. Mulheron
4 just testified that Mr. Perez seemed unnerved when
5 he made the statement, and I think he went on to
6 elaborate on that. So there is no prejudice, and
7 not getting into this hearsay statement, because
8 that's testimony. I think it's pretty clear that
9 Mr. Perez can use that in closing, if he wants.

10 (The following proceedings were held in
11 open court.)

12 THE COURT: All right. Mr. Villa?

13 BY MR. VILLA:

14 Q. I know you testified, Warden Mulheron,
15 that you didn't get a memo from STIU Holguin. In
16 the past, have you received memos, on occasion,
17 about interviews done by STIU?

18 A. I have on occasion.

19 Q. Is there a term that those memos are often
20 referred to by inmates?

21 A. I'm not aware of a term that they
22 specifically use.

23 Q. Have you ever heard of the term "black and
24 whites"?

25 MR. BECK: Objection, Your Honor, leading.

1 THE COURT: Overruled.

2 BY MR. VILLA:

3 Q. Have you ever heard that term, "black and
4 whites"?

5 A. No, I haven't.

6 Q. So you testified a minute ago that when
7 you spoke to Mr. Perez, his demeanor was unnerved,
8 and he appeared scared?

9 A. Correct.

10 Q. After you interviewed Mr. Perez, did you
11 have concerns for Mr. Perez' safety?

12 A. Not specifically. I knew at that time he
13 was in restrictive housing.

14 Q. What -- I'm sorry, what's restrictive
15 housing?

16 A. It's segregation -- not isolation, but
17 it's basically inmates confined to their individual
18 cell, and they don't have congregate activity with
19 other inmates, because there may be a threat or an
20 investigation going on that we need to isolate them
21 until we can find out what's going on.

22 Q. And, in this case, after the Javier Molina
23 killing, everybody from that pod got put in
24 segregation; right?

25 A. I believe it was the whole pod, yes.

1 Q. And so at the time you spoke to him, he
2 was in that segregation?

3 A. Yes.

4 Q. If he had been released from segregation
5 into congregate housing where he could be in the pod
6 with other inmates, did you have concerns for his
7 safety?

8 A. I would have had concerns, yes.

9 Q. Now, I'm going to show you what's been
10 admitted as Defendants' Exhibit FW-1. Now, this is
11 a document entitled "United States Response to
12 Defendant Rudy Perez' Motion"; do you see that
13 there?

14 A. I do.

15 Q. And up at the top it says that it was
16 filed November 3, 2017.

17 A. Correct.

18 Q. Have you ever seen this before?

19 A. I haven't seen it.

20 Q. Let me take you a couple of pages in,
21 here. So I'm showing you page 3, and we'll blow it
22 up there a little bit for you.

23 It says here that on June 17, 2015,
24 defendant -- that's Rudy Perez -- was transferred
25 from the Southern New Mexico Correctional Facility

1 to the Penitentiary of New Mexico; right?

2 A. Correct.

3 Q. And SNMCF, that's just the abbreviation
4 for Southern New Mexico?

5 A. Yes, it is.

6 Q. And the second sentence says, "This
7 transfer was based on a 90-day disciplinary
8 sanction." And then the next sentence after that
9 says, "After completing his sanction, defendant was
10 not transferred back to Southern New Mexico due to
11 safety concerns that Southern New Mexico had for
12 defendant in that facility." Do you see that?

13 A. I do.

14 Q. And let me take you to the last page of
15 this document, page 7. This indicates that this
16 document -- we'll blow it up for you -- was
17 submitted by Maria Armijo, Randy Castellano, and
18 Matthew Beck; correct?

19 A. Correct.

20 MR. VILLA: That's all the questions I
21 have, Your Honor.

22 THE COURT: Thank you, Mr. Villa.

23 Do any of the other defendants have direct
24 examination of Mr. Mulheron?

25 MS. DUNCAN: No, Your Honor.

1 THE COURT: All right. Mr. Beck, are you
2 handling cross-examination of Mr. Mulheron?

3 MR. BECK: Yes, Your Honor.

4 THE COURT: All right. Mr. Beck?

5 CROSS-EXAMINATION

6 BY MR. BECK:

7 Q. Mr. Mulheron, I want to talk to you about
8 that last document that talked about safety concerns
9 at Southern New Mexico Correctional Facility. Do
10 you remember how many years you interacted with Mr.
11 Perez at Southern New Mexico Correctional Facility?

12 A. I don't. I don't remember the length of
13 time.

14 Q. Was it -- can you approximate -- two
15 years, three years, four years?

16 A. I remember it being at least a year.

17 Q. Okay. And in that year time period, was
18 he housed within -- before -- let me take that
19 differently. Before the Molina murder, was he
20 housed in an SNM pod?

21 A. I believe he was.

22 Q. Did that SNM pod have wheelchair
23 accessible cells?

24 A. No, it didn't.

25 Q. Now, as STIU coordinator and as deputy

1 warden and as warden, especially as deputy warden
2 and warden, does your job include the housing
3 placement of inmates, at least some oversight, of
4 that?

5 A. Some oversight.

6 Q. And you know, as warden and as STIU
7 coordinator, that inmates who are validated or
8 suspected to be in an STG are housed in a specific
9 housing unit?

10 A. Yes.

11 Q. And an STG is a Security Threat Group,
12 right?

13 A. Yes.

14 Q. And a security threat group -- one of
15 those security threat groups, is the SNM prison
16 gang; right?

17 A. Yes, it is.

18 Q. Those inmates who are validated or
19 suspected SNM members have to be housed in an SNM
20 pod; right?

21 A. They do.

22 Q. Now, if Mr. Perez, in 2015, was in a
23 wheelchair, would you agree with me that it poses a
24 danger if you're put in a cell where it's not
25 wheelchair accessible?

1 A. Yes.

2 Q. Okay. Because they could slip and fall
3 trying to walk out of that when they don't have
4 their wheelchair; right?

5 A. Right. The way the pods are set up, there
6 is an incline. So there are steps going down to the
7 bottom tier.

8 Q. And that's where Mr. Perez was housed,
9 when he was housed in that pod, in the bottom tier;
10 right?

11 A. As I remember, yes.

12 Q. Okay. Are you aware that the Penitentiary
13 of New Mexico in Santa Fe has specific wheelchair
14 accessible cells?

15 A. I wasn't aware.

16 Q. So you're not aware that they have
17 wheelchair cells that have a shower inside the cell?

18 A. No, I wasn't.

19 Q. Okay. Do the cells in the SNM pod at
20 Southern New Mexico have a shower in the cell so
21 that handicapped persons can take a shower in their
22 cell?

23 A. No, they don't.

24 Q. Okay. So would you agree with me that
25 someone who needs a wheelchair, if that person had

1 to walk from their cell to the shower and back,
2 they'd be in danger of slipping?

3 A. I would think so.

4 Q. Okay. And so that danger of someone
5 hurting themselves, would you say that's a security
6 concern?

7 A. Yes.

8 Q. And just to be clear, in 2015, when Mr.
9 Perez was looking to be transferred down to the
10 Southern New Mexico Correctional Facility, he could
11 not have been housed outside of either the SNM pod
12 or in administrative segregation cell; right?

13 A. That's correct.

14 Q. Okay. Do you know whether Southern New
15 Mexico Correctional Facility had any wheelchair
16 accessible pods available -- accessible cells
17 available for Mr. Perez in that 2015 time period?

18 A. I would say we didn't.

19 Q. I think Mr. Villa talked to you about
20 restrictive housing; right?

21 A. Yes.

22 Q. That's also called administrative
23 segregation?

24 A. That's correct.

25 Q. We talked about your duties as warden and

1 deputy warden. Does that include some level in the
2 process of putting an inmate in administrative
3 segregation?

4 A. Not necessarily putting them in. But
5 they're more involved in the review of justifying
6 that they continue placement in there.

7 Q. Okay. And at what point does that review
8 happen?

9 A. When someone is placed into segregation,
10 it's 72-hour review by the chief of security, then,
11 I believe, within five days by the deputy warden.

12 Q. So you're involved in the process of
13 putting someone in, or keeping them in
14 administrative segregation within five days of them
15 being placed there; right?

16 A. Correct.

17 Q. And the reason someone may be placed there
18 are that someone may ask to be placed in
19 administrative segregation; right?

20 A. Yes.

21 Q. Are you involved if someone asks to be
22 placed in administrative segregation?

23 A. Typically not.

24 Q. But as the warden or deputy warden, would
25 you be made aware of that?

1 A. You'll be made aware, typically via email.

2 Q. Because it's your duty as warden or deputy
3 warden, at least in part, to oversee where inmates
4 are housed; right?

5 A. Correct.

6 Q. And you are involved if they are placed in
7 the administrative segregation involuntarily;
8 correct?

9 A. Correct.

10 Q. And that would be when someone has not
11 asked to be placed in voluntary segregation?

12 A. That is correct.

13 Q. And I want to take you back to your
14 investigation after the Molina murder. You said you
15 investigated the wheelchair program, right?

16 A. We conducted a search of it that evening.

17 Q. Okay. And at this time you were deputy
18 warden?

19 A. Yes, I was.

20 Q. And other people in the Corrections
21 Department at Southern New Mexico Correctional
22 Facility thought that the shanks may have come from
23 the wheelchair program; right?

24 A. That's correct.

25 Q. But you didn't think that?

1 A. I'm not sure what I thought. After that
2 search, I didn't believe they came from the
3 wheelchair program.

4 Q. Okay. You previously testified in this
5 case, right?

6 A. I have.

7 Q. And you were asked about your
8 investigation of the wheelchair program. Do you
9 remember that?

10 A. I do remember that.

11 Q. Okay. And that was back in December of
12 last year; right?

13 A. Yes, sir.

14 Q. Okay. And before your testimony in
15 December of 2017 of last year, you met with the
16 prosecutors to prepare for that; right?

17 A. I did.

18 Q. And we told you that we were going to have
19 you testify about your investigation of the
20 wheelchair program; right?

21 A. Yes.

22 Q. Okay. And we met with you a little bit
23 before the day you testified; right?

24 A. Yes.

25 Q. And we met with you on the day you

1 testified?

2 A. Yes.

3 Q. So you knew very well that you were going
4 to testify about the wheelchair program?

5 A. On that day?

6 Q. Yeah.

7 A. I did.

8 Q. So if you testified that day that other
9 people thought that the shanks may have come from
10 there, but you didn't think that, would you think
11 that that was probably right?

12 A. It could have been.

13 Q. Okay. And then when you went into the
14 wheelchair program and investigated, you didn't
15 think they came from there because there are
16 security measures in place there; right?

17 A. Partially.

18 Q. Okay. Those security measures include
19 that inmates are searched before they go into the
20 wheelchair program; right?

21 A. Yes.

22 Q. And then they're searched when they come
23 out of the wheelchair program; right?

24 A. Correct.

25 Q. And you'd agree with me that the

1 wheelchair program keeps detailed records of the
2 inventory of the wheelchair program?

3 A. I couldn't answer that.

4 Q. Okay. But as the warden or deputy warden,
5 do you think it would be prudent to keep detailed
6 inventory records of what's in there?

7 A. You would like them to, yes.

8 Q. And why is that?

9 A. Just for accountability.

10 Q. Is it also because there is metal in the
11 wheelchair program?

12 A. Yes.

13 Q. And you, as -- I mean, in your experience
14 in 25 years in corrections and especially -- how
15 many years did you spend in the STIU?

16 A. Seven years.

17 Q. Seven years. And that included STIU
18 coordinator; right?

19 A. Yeah, I was STIU coordinator for that
20 entire seven years.

21 Q. So you know that inmates fashion shanks
22 out of metal?

23 A. They do.

24 Q. So in the wheelchair program, when inmates
25 are leaving, they're searched; correct?

1 A. Correct.

2 Q. That search includes a wand to detect
3 metal; right?

4 A. Yes.

5 Q. So similar, I guess, when I think of that
6 I think about walking through the airport when
7 you're wanded down, or when you walk into a concert,
8 to detect metal; right?

9 A. Right.

10 Q. That's what they use to search the inmates
11 as they leave?

12 A. Yes.

13 Q. When you investigated that, you determined
14 that the shanks used in the Javier Molina murder did
15 not come from the wheelchair program; right?

16 A. I came to that determination after doing a
17 search of the wheelchair program that evening, and
18 not finding anything consistent with what the shanks
19 were made out of.

20 Q. And I think you said that there were
21 walkers there that night; right?

22 A. Yes, there was.

23 Q. A couple?

24 A. I believe there was two or three.

25 Q. But those walkers were stainless steel,

1 right?

2 A. Yes.

3 Q. They were not black or maroon in color?

4 A. Correct.

5 Q. And you knew at that time -- you'd seen
6 pictures of the shanks, right?

7 A. I did see a picture, yes.

8 Q. You knew, at that time, that the shanks
9 were black or maroon in color?

10 A. Correct.

11 Q. You didn't find a walker that was black or
12 maroon in color at that time?

13 A. No, I didn't.

14 Q. So you didn't know where the shanks came
15 from, but at that time you pretty much ruled out
16 they came from the wheelchair program; right?

17 A. Yes.

18 Q. Then, later on, was when you remembered
19 that you had seen a walker in the SNM pod; right?

20 A. That's correct.

21 Q. Not only in the SNM pod, but in blue pod,
22 where Javier Molina was murdered?

23 A. Yes.

24 Q. And that walker belonged to Rudy Perez?

25 A. It did.

1 Q. That's why you went and found Rudy Perez;
2 right?

3 A. Yes. I was going to do my rounds, I knew
4 eventually I'd run into Rudy. And so when I get to
5 Rudy, I'll talk to him about -- I'll look at the
6 walker and go from there.

7 Q. And you thought, at least possibly, if not
8 probably, they may have come from Rudy's walker;
9 right?

10 A. That was a possibility.

11 Q. That's why you wanted to talk to him about
12 it?

13 A. I did, I wanted to cover the bases.

14 Q. And when you got in the cell -- can you
15 bring up Government's Exhibit 89? Let's do
16 Government's Exhibit 90. It's a little bit better
17 picture.

18 When you got in the cell with Rudy Perez,
19 this is what you saw as his walker; right?

20 A. Correct.

21 Q. And you noticed it stood out to you
22 because of these white rags on the sides of it;
23 right?

24 A. Yes, that is what stood out.

25 Q. And earlier you and I talked about --

1 you've ruled out the wheelchairs -- excuse me, the
2 walkers in the wheelchair program because they were
3 stainless steel; right?

4 A. Correct.

5 Q. And you had seen the pictures of the
6 shanks, and they were consistent with this black and
7 maroon color on the metal on Rudy's walker.

8 A. As I remember, they were black.

9 Q. All right. So based on -- based on seeing
10 these sheets -- seeing the shanks, ruling out the
11 wheelchair program, you concluded that the shanks
12 came from Rudy's walker; right?

13 A. I believe they did.

14 Q. You have medical personnel on staff at
15 Southern New Mexico Correctional Facility; right?

16 A. We do have 24-hour.

17 Q. And that includes nurses?

18 A. Yes, it does.

19 Q. When Rudy Perez was housed there, the
20 nurse went to see him on a daily basis; right?

21 A. They would have been within that pod on a
22 daily basis. I don't know if they were specifically
23 going there to see Rudy or not.

24 Q. So nurses, during the time that Rudy was
25 housed at Southern New Mexico Correctional Facility,

1 would have been in his pod on a daily basis?

2 A. I believe so, yes.

3 MR. BECK: May I have a moment, Your
4 Honor?

5 THE COURT: You may.

6 MR. BECK: Nothing further, Your Honor.

7 THE COURT: All right. Thank you, Mr.
8 Beck.

9 Let me see, Mr. Villa, if anybody else has
10 anything they want to do with Mr. Mulheron.

11 All right, Mr. Villa. If you have
12 redirect of Mr. Mulheron.

13 MR. VILLA: Thank you, Your Honor.

14 THE COURT: Mr. Villa.

15 REDIRECT EXAMINATION

16 BY MR. VILLA:

17 Q. Mr. Mulheron, you would agree with me that
18 Mr. Perez lived in the blue pod, based on what we
19 saw from his location history from October 2013,
20 until March 7, 2014?

21 A. Yes, I do.

22 Q. And he lived down there in -- with his
23 walker?

24 A. I would say so, yes.

25 Q. And that's -- do you know if the cell he

1 was in is a handicapped cell?

2 A. No, it wasn't.

3 Q. It was not?

4 A. I don't believe it was a handicapped cell.

5 Q. And during that period of time, were you
6 ever aware if Mr. Perez slipped and fell or hurt
7 himself in that cell?

8 A. I'm not aware.

9 Q. And you testified with Mr. Beck, just a
10 minute ago, that that pod is an SNM pod?

11 A. Yes.

12 Q. Do you know whether Mr. Perez had any
13 decision-making power at all in which pod he was
14 going to be placed?

15 A. He wouldn't have any.

16 Q. He wouldn't. He doesn't get to make that
17 decision?

18 A. No, he doesn't.

19 Q. And the time when you went to talk to him
20 and you said, you know, he looked scared, he was in
21 fear, and after that you said that if he'd gotten to
22 congregate housing, you were concerned about his
23 safety?

24 A. Yes.

25 Q. And you knew that if he got into

1 congregate housing, would it be an SNM pod?

2 A. Yes, it would.

3 Q. And him going back to that SNM pod in
4 congregate housing where he could be around other
5 inmates, the concern you had for Mr. Perez was not
6 about him slipping and falling, was it?

7 A. No, it wasn't.

8 MR. VILLA: No further questions.

9 THE COURT: All right. Thank you, Mr.
10 Villa.

11 Do you have something further, Mr. Beck?

12 MR. BECK: Yes, Your Honor.

13 THE COURT: Mr. Beck.

14 RECROSS-EXAMINATION

15 BY MR. BECK:

16 Q. You said that Mr. Perez wouldn't have any
17 choice about being housed in the SNM pod; right?

18 A. Correct.

19 Q. But that's not true, is it? I think we
20 talked about earlier, he could ask to be placed in
21 administrative segregation; right?

22 A. Right. I mean, he could request to get
23 out of there if he felt his life was in danger.

24 Q. You know what the RPP is?

25 A. Restoration into Population Program.

1 Q. And what is that?

2 A. It's basically, any inmates that don't
3 want to participate in gang activity, it's an avenue
4 for them to denounce their gang membership. And the
5 ultimate goal is that they leave the gang, they have
6 no more gang activity, and they go back into
7 population as a constructive inmate.

8 Q. Okay. So that returns an inmate who
9 previously would have been segregated because of
10 their STG membership, returns them into general
11 population possibly; right?

12 A. Possibly, yes.

13 Q. And an inmate, to be put in RPP, has to
14 request that, don't they?

15 A. They do have to request it.

16 Q. Okay. And so if an inmate, like Mr.
17 Perez, requests to enter the RPP program, he can be
18 put back into population; right?

19 A. The goal is that he could.

20 Q. Okay. And when an inmate requests RPP, if
21 they're allowed into the program -- well, they're
22 allowed into the program if it's a genuine request;
23 right?

24 A. If it's --

25 Q. That's my word, not Corrections. I mean,

1 Corrections doesn't just -- if someone says I want
2 to be put in RPP, they don't just automatically move
3 them to that program; right?

4 A. No. I don't run the program, but, you
5 know, as far as my understanding of it, they do have
6 to fully debrief and be cooperative with the
7 department before they'll be allowed to go. They
8 have to be sincere about denouncing their gang
9 membership.

10 Q. And after they're sincere, then they're
11 moved into the RPP program; correct?

12 A. That's correct.

13 Q. So when you said that Mr. Perez didn't
14 have any decision about being housed in the SNM pod,
15 that's not true; is it?

16 A. I don't know. I guess there was avenues
17 out, yes.

18 MR. BECK: Nothing further, Your Honor.

19 THE COURT: Thank you, Mr. Beck.

20 Mr. Villa?

21 FURTHER REDIRECT EXAMINATION

22 BY MR. VILLA:

23 Q. Warden Mulheron, do you know an inmate by
24 the name of Paul Valenzuela?

25 A. I do.

1 Q. He was housed at the Southern New Mexico
2 Correctional Facility approximately 2013, 2014?

3 A. Sounds about right.

4 Q. And do you know if --

5 MR. BECK: Your Honor, outside the scope.

6 MR. VILLA: This has to do with the RPP
7 program.

8 THE COURT: All right. Overruled.

9 BY MR. VILLA:

10 Q. Do you know if he requested to be put in
11 protective custody or the RPP Program?

12 A. I don't know about the RPP. I do believe
13 that he requested protective custody.

14 Q. Was that after he spoke to Captain Daniel
15 Blanco?

16 A. It would have to be after -- or -- as far
17 as requesting the RPP or protective custody?

18 Q. Well, either one. Do you know if he
19 talked --

20 MR. BECK: Objection, Your Honor,
21 foundation. I think he's asking that question.

22 THE COURT: Why don't you just ask him
23 this question, whether he knows. If he doesn't
24 know, then we probably shouldn't --

25

1 BY MR. VILLA:

2 Q. Do you know if Mr. Valenzuela's request to
3 go to protective custody was after he talked to
4 Captain Daniel Blanco?

5 A. No, I don't know that.

6 Q. Do you know if his request to go to RPP
7 was after he talked to Captain Daniel Blanco?

8 A. No, I do not know that.

9 Q. Okay. Do you know what happened to Paul
10 Valenzuela after he made that request?

11 A. I don't.

12 Q. Now, let me ask you this: If someone in
13 the SNM pod had come to Mr. Perez' room and told
14 them they were taking a piece off of his walker,
15 before that piece came off, how quickly could Mr.
16 Perez get put into the RPP program?

17 A. I'm not sure what the timeframe -- the RPP
18 program is more of a -- you don't go in there
19 instantly. But prior to going in there, you're
20 typically going to go into protective custody, which
21 can almost happen immediately.

22 Q. Okay. So how quick does it take to get an
23 inmate into protective custody?

24 A. You ask -- you pretty much ask, you're
25 going to go in there.

1 Q. So in the blue pod, there's not always a
2 correction officer in the pod at all times; right?

3 A. No, there is not.

4 Q. They're up in the tower?

5 A. They're in the tower or the other pods,
6 conducting rounds.

7 Q. Okay. So Mr. Perez is sitting in his
8 room, and somebody comes in to take the piece from
9 his walker. If Mr. Perez is physically able, how
10 quick could he get into protective custody before
11 that piece of his walker came off his chair?

12 A. I couldn't even speculate on that.

13 Q. Because you don't know?

14 A. Yeah, I don't know. I mean, the officers
15 are mandated to do rounds once an hour. But then
16 again, you have the officer in the control center
17 that's there 24/7.

18 Q. Okay.

19 A. But I couldn't answer. You know, it's a
20 situation that I don't know, it would be better left
21 for them to answer.

22 Q. I got it. And whether Mr. Perez was put
23 in protective custody or RPP, or not, after you
24 talked to him, you had concerns for him being put
25 back into an SNM pod; didn't you?

1 A. I would have had concerns, yes.

2 MR. VILLA: That's all the questions I
3 have.

4 THE COURT: Thank you, Mr. Villa.

5 Did you have something further, Mr. Beck?

6 MR. BECK: Yes, Your Honor.

7 FURTHER RECROSS-EXAMINATION

8 BY MR. BECK:

9 Q. Mr. Villa talked to you about Paul
10 Valenzuela; right?

11 A. Yes.

12 Q. And we talked about this earlier, but as
13 warden or deputy warden, you have to sign off when
14 someone is placed in involuntary segregation; right?

15 A. You don't necessarily have to sign off.
16 You have to review it for justification, I guess you
17 would say.

18 Q. And you reviewed Mr. Valenzuela being put
19 on segregation -- you know that he was placed on
20 segregation in 2013; right?

21 A. Yes.

22 Q. Okay. And that was not him asking to be
23 placed in segregation; that was an involuntary
24 placement in segregation; right?

25 A. I believe there was two instances: One

1 yes and one no.

2 Q. All right. Would it refresh your
3 recollection whether in 2013, he was placed in
4 involuntary segregation, if I showed you the
5 disciplinary placement report?

6 A. Sure.

7 MR. BECK: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 BY MR. BECK:

11 Q. Go ahead and look at the back two pages of
12 this.

13 A. Okay.

14 Q. And while you're looking at that, Mr.
15 Mulheron, what did I just hand you? What is that
16 document?

17 A. It's basically a placement into
18 segregation.

19 Q. And is this a document that you see within
20 the five days after someone is put into involuntary
21 segregation?

22 A. Usually, I'll see the follow-up
23 documentation that's conducted by the unit manager.
24 And basically I'm confirming his continued placement
25 in the segregation, or I may not feel it's

1 justified, and take him out of segregation and move
2 him back into the population.

3 Q. Fair enough. Look over that, and let me
4 know when your memory is refreshed whether he was
5 put on involuntary segregation in 2013?

6 A. Yes, he was.

7 Q. And is an inmate placed in voluntary
8 segregation when someone drops a kite about them?

9 A. That could be a reason, yes.

10 Q. And what does it mean that someone drops a
11 kite about them?

12 A. Typically, a kite is going to be a letter
13 written, saying -- I'm just giving an example: So
14 and so is going to get beat up, you need to move him
15 out of the population. There is typically no
16 signature, no author, nobody identifies as the
17 author of the letter.

18 Q. And that's a way to protect an inmate from
19 being assaulted or killed, if another inmate has
20 information about it but doesn't want to be outed as
21 the source of that information; right?

22 A. That could be.

23 Q. Okay. And you were STIU coordinator for
24 seven years, we went over that; right?

25 A. Correct.

1 Q. As STIU coordinator, wouldn't you agree
2 that if a CO, or even you, get a kite like that,
3 that someone is going to be assaulted or murdered,
4 you would do everything to move that person out of
5 the pod, out of their cell, as quickly as possible?

6 A. That was always my practice. Just decide
7 on it. Why take a chance?

8 Q. In 2013, Paul Valenzuela was moved out of
9 his cell for administrative segregation; right?

10 A. On the document, yes, it appears he was.

11 Q. Okay. Now, if someone -- as an STIU
12 coordinator or STIU agent, you developed
13 confidential sources; right?

14 A. Correct.

15 Q. And a confidential source would be an
16 inmate inside the prison who provides you
17 information into gang activity?

18 A. Correct.

19 Q. And in STIU, you'd be looking for STG gang
20 activity; right?

21 A. You would.

22 Q. And if someone provided you information
23 about gang activity as a confidential source, would
24 you immediately -- well, let me ask you this
25 question first: That would be telling; right?

1 A. Right.

2 Q. That would make that person a snitch;
3 right?

4 A. In prison terminology, yes.

5 Q. And for that reason, in your reports, when
6 you get that information, you label them as a CI and
7 give them a number; right?

8 A. Yes.

9 Q. Okay. When someone provides you
10 information like that, as a CI, do you immediately
11 move them out of their cell, out of the unit?

12 A. No. My practice would be to keep them in
13 that unit.

14 Q. You'd want to keep them in that unit
15 because they could provide further information;
16 right?

17 A. Correct.

18 Q. So you would actually want to keep them in
19 the same unit when they're providing you information
20 as a confidential source?

21 A. That's correct.

22 Q. Was Mr. Valenzuela removed for voluntary
23 administrative segregation in 2014?

24 A. I believe he was.

25 Q. And was he moved there because he stated

1 that SNM members threatened him, that when they'd
2 open up the doors, "You'll be handled like Javier";
3 do you remember that?

4 A. That -- it does sound familiar. I don't
5 remember it specifically -- but --

6 Q. Would it refresh your recollection if I
7 provided the report that says that?

8 A. Yes, if I could.

9 MR. BECK: May I approach, Your Honor?

10 THE COURT: You may.

11 BY MR. BECK:

12 Q. Mr. Mulheron, I just handed you another
13 Corrections document regarding involuntary -- or
14 voluntary segregation this time; right?

15 A. That's correct.

16 Q. And you've seen these documents before?

17 A. I have.

18 Q. Is your memory refreshed?

19 A. Yes.

20 Q. So, in this case, was Mr. Valenzuela put
21 in administrative segregation at his request because
22 he said that SNM members threatened that when the
23 doors open up he will be "handled like Javier"?

24 A. Yes.

25 MR. BECK: Nothing further, Your Honor.

1 THE COURT: Thank you, Mr. Beck.
2 Mr. Villa?

3 FURTHER REDIRECT EXAMINATION

4 BY MR. VILLA:

5 Q. The first segregation of Mr. Valenzuela,
6 was that because he dropped a kite?

7 A. That he dropped a kite?

8 Q. Yeah.

9 A. I'm not sure if he dropped a kite, or a
10 kite was dropped on him.

11 Q. And when a kite is dropped, that's a
12 letter, a document, that's given by an inmate to
13 somebody in Corrections saying there is a threat?

14 A. Right. Typically it's given, or you find
15 it in the mail, or it's found in the common area.
16 It will say: Get so and so out of here, for
17 whatever reason.

18 Q. So did Paul Valenzuela, in 2013, drop a
19 kite saying that Javier Molina was in danger?

20 A. I have never heard that.

21 Q. Do you know, one way or another?

22 A. I don't.

23 Q. Do you know if he told that to Captain
24 Blanco?

25 A. I have no idea.

1 Q. Have you ever talked to Captain Blanco
2 about that?

3 A. I haven't.

4 Q. Have you ever talked to anybody from the
5 FBI about that?

6 A. I don't believe I have.

7 Q. Agent Nancy Stemo?

8 A. I don't even know who that is, so --

9 Q. What about Chris Cupit? Do you know who
10 that is?

11 MR. BECK: Objection, Your Honor, asked
12 and answered. He asked if he talked to anybody at
13 the FBI.

14 THE COURT: Overruled.

15 A. Yes, I know who Chris Cupit is.

16 BY MR. VILLA:

17 Q. He's not in the FBI, is he?

18 A. No, he's not.

19 Q. He's in the Department of Corrections?

20 A. Correct.

21 Q. Did you ask Chris Cupit if Paul Valenzuela
22 dropped a kite, trying to protect Javier Molina?

23 A. Not that I recall, no.

24 Q. You didn't ask Chris Cupit that?

25 A. I don't recall asking him.

1 MR. VILLA: One moment, Your Honor.

2 THE COURT: Yes.

3 BY MR. VILLA:

4 Q. Do you know if Paul Valenzuela spoke to
5 the FBI about that?

6 A. I don't know.

7 Q. Now, same question, getting back to Mr.
8 Perez. If someone came in to Mr. Perez' room to
9 take a piece off of his walker, assuming Mr. Perez
10 had any idea who it was for, how fast could he drop
11 a kite before that piece could get taken off of his
12 walker?

13 A. Probably not very fast.

14 MR. VILLA: May I have just one moment?

15 THE COURT: You may.

16 MR. VILLA: That's all the questions.

17 THE COURT: Thank you, Mr. Villa.

18 All right. Mr. Mulheron, you may step
19 down.

20 Is there any reason that Mr. Mulheron
21 cannot be excused from the proceedings? Can he be
22 excused, Mr. Villa?

23 MR. VILLA: Yes, Your Honor.

24 THE COURT: Anyone else disagree? How
25 about you, Mr. Beck?

1 MR. BECK: He may be excused, Your Honor.

2 THE COURT: All right. You're excused
3 from the proceedings. Thank you for your testimony.

4 All right. Do the defendants have their
5 next witness or evidence?

6 MS. DUNCAN: Your Honor, may we approach?

7 THE COURT: You may.

8 (The following proceedings were held at
9 the bench.)

10 MR. LOWRY: Your Honor, the defense isn't
11 ready to close yet, especially in light of -- we're
12 still getting the field notes and everything on
13 Agent Acee. And we had worked out an agreement with
14 the United States that they could proceed with their
15 rebuttal, and that everybody was in agreement that
16 we would call Agent Acee as the last witness.

17 THE COURT: As the defendants' last
18 witness?

19 MR. LOWRY: Yes.

20 THE COURT: And you're not prepared to go
21 right at the moment?

22 MR. LOWRY: No, Your Honor, we're not.

23 MR. VILLA: The agreement, Your Honor, was
24 to let Agent Acee go do what he needed to do that
25 day. The Government would do the rebuttal, and skip

1 him as the last word, and reserve rebuttal, if you
2 will.

3 MR. LOWRY: And we just, minutes ago,
4 received a second wave of the field notes.

5 THE COURT: His field notes?

6 MR. LOWRY: No, everybody's field notes
7 that sat in on the interviews of Lupe Urquizo, Mario
8 Rodriguez, and Timothy Martinez. And this is to go
9 through this whole window conversation, and
10 everything. So this was an agreement we actually
11 brokered with the United States to keep the evidence
12 running smoothly without adjourning.

13 THE COURT: Okay. Is that the agreement?
14 That's roughly what I understood from Ms. Wild, not
15 last night, but the night before last.

16 MR. BECK: The agreement yesterday was --

17 THE COURT: Did he meet with the FBI
18 director? Is that Mr. Ryan? Is that who that is?

19 MR. BECK: Yes, the FBI director.

20 THE COURT: Do I get to find out what he
21 was meeting with the FBI director on?

22 MR. BECK: You might think that it's
23 probably the same reason you got an extra law clerk.

24 THE COURT: Okay.

25 MS. JACKS: Can I just say that, given the

1 disclosures last night, I think there may be
2 additional witnesses beside Agent Acee if this case
3 proceeds beyond a motion to dismiss that I just
4 filed.

5 THE COURT: I was anticipating maybe that
6 request. How does the Government feel about that,
7 if they look through this, and in addition to Acee,
8 they want somebody else?

9 MR. BECK: To be candid and fair, Your
10 Honor, my reaction, after staying up all night
11 reading 981 pages, is different than it might have
12 been last night. So I think that's fair.

13 THE COURT: Okay. So we'll just leave
14 that open and it's not foreclosed.

15 MR. BECK: Yes.

16 THE COURT: Let me let Ms. Bhalla go.

17 MS. BHALLA: Your Honor, when you're
18 considering the motion that I raised, I think the
19 Court needs to keep in mind that some of the new
20 field notes we've gotten, we may have to recall
21 every single witness. I don't want to do that,
22 that's last thing I want to do.

23 But I want to put the Court on notice that
24 in some of the field notes we just received, there
25 is actually information that people who committed

1 the murder didn't know whether or not Carlos was
2 involved in the murder. And I think that that's
3 really a big deal for our defense. And I think that
4 we're -- I just want the Court to realize that, in
5 addition to all the discovery we got last night,
6 that I raised this morning in these new field notes,
7 there is clearly exculpatory statements that were
8 contained in the field notes that weren't contained
9 in the 302s.

10 And I want the Court to consider that when
11 you're looking at the dismissal or motion for
12 mistrial, I think putting us in a position of
13 recalling the witnesses. It's not just one or two,
14 it's like four or five.

15 MR. VILLA: I would say optimally we can,
16 like the Government, when they rest their case. But
17 we get a surrebuttal like we've been talking about,
18 to the jury.

19 THE COURT: That was going to be my next
20 question, is that what I should do at this point,
21 ask the defendants if they have further witnesses
22 and the defendant say something like we rest at this
23 time, something like that?

24 MR. BECK: I guess for aesthetics and
25 making it clean -- it seems to me it may be cleaner

1 if you just ask if the United States has rebuttal,
2 because I don't think they know how these things
3 work.

4 And then after that, we can ask -- after
5 we're done, and we don't need to rest with our
6 rebuttal, we can just approach like we do here and
7 you can ask: Okay, does the defense have any more?
8 And at that point defense rests. And I'll leave it
9 in their court. But if I was a juror, I might think
10 that would be cleaner.

11 THE COURT: Do y'all want me to just
12 ask -- my next question would be just: Does the
13 Government have rebuttal, just move on from there,
14 and then we'll come back and deal with the
15 transition --

16 MS. BHALLA: Yes, Your Honor. Thank you.

17 THE COURT: Are you comfortable with that?

18 MS. DUNCAN: Your Honor, we have an issue
19 on one of the rebuttal witnesses. I don't know if
20 he's coming up first, Anthony Romero.

21 MR. BECK: He may be first, I'm not sure.

22 MS. DUNCAN: We understand Anthony Romero
23 is being called as an impeachment witness on Edward
24 Urtiaga. We would object and ask the Court to
25 exclude Mr. Romero for the following reason: As you

1 recall, Mr. Urtiaga testified on direct that he is
2 on administrative leave.

3 And then on cross, Ms. Armijo asked him
4 about a defense investigator threatening him. And
5 so on redirect, in rebuttal to that, I brought up
6 the fact that he also was concerned about
7 retaliation from the Department of Corrections, and
8 left it at that.

9 And then on recross, Ms. Armijo asked him
10 specifically who he felt -- who retaliated against
11 him. And then he named Anthony Romero in Ms.
12 Armijo's questioning. So this is extrinsic evidence
13 of that fact that they're bringing in, in recording
14 Eric Duran, and we ask for the Court to exclude it
15 for Mr. Urtiaga. The leave he's on is three years
16 after the incident about Mr. Duran for which he
17 testified.

18 THE COURT: Does Ms. Duncan describe
19 accurately, in your memory, what was done with Mr.
20 Romero, and is her anticipation of what you're going
21 to do with him on rebuttal accurate?

22 MR. BECK: So --

23 MS. ARMIJO: I have printed off
24 downstairs -- printed off questions from the
25 transcript. And I can go get it, Your Honor, as far

1 as the questions that were asked, and he basically
2 says Mr. Romero would lie and was retaliating
3 against him. I did print some of that off.

4 MR. BECK: So the purpose of Mr. Romero
5 is -- to a certain extent, Ms. Perez' testimony is
6 that Mr. Urtiaga said he didn't believe that he was
7 being strung out on administrative leave as
8 retaliation. Both Ms. Perez, who wrote the
9 referral, and Mr. Romero, as the warden who signed
10 off on the referral, will testify about how it was
11 referred to internal investigation, if the internal
12 investigation operates differently from the state
13 investigation, and that it is ongoing currently, and
14 their involvement with it.

15 THE COURT: So you don't intend to get
16 into the actual bad act here? You just intend to go
17 through the administrative process?

18 MR. BECK: Yeah, I think part and parcel
19 to that is the bad act, in that it is a Type 1
20 incident, because it's use of force. But not into
21 the underlying conduct that was the bad act. Just
22 that when there is a Type 1 use of force incident,
23 the procedure that it goes through is the Deputy
24 Warden Ms. Perez, to the warden, and then to OPS,
25 which is their internal affairs.

1 THE COURT: Is he going to be testifying
2 about this being a Type 1 incident or just -- is he
3 going to describe what happens with Type 1
4 incidents?

5 MR. BECK: I think he's going to describe
6 that this is a Type 1 incident, and that's -- so I
7 think that explains why his name is involved with
8 the process in the complaint, because for a Type 1
9 process, it has to go through the warden.

10 For a Type 2 process, it's handled on the
11 local level. It doesn't go to the warden and to the
12 OPS. So he explains that this is a Type 1 incident.
13 This is what happens with Type 1 incidents. That's
14 why I referred this to OPS.

15 THE COURT: So with that limited calling,
16 is there still an issue, a problem?

17 MS. DUNCAN: I think so, Your Honor. I
18 think that the Type 1 relates to the severity or how
19 serious the New Mexico Department of Corrections
20 treats the incidents, which is based totally on
21 hearsay, first of all, because I don't think
22 Ms. Perez or Mr. Romero were present at that time.
23 I think this is a collateral issue. And the fact
24 that we're bringing in two witnesses to testify
25 about it seems to me improper, looking at a mini

1 trial on this extrinsic evidence.

2 I'd also note for the Court, there is a
3 lot of evidence that Mr. Romero has a reputation for
4 retaliating against staff and inmates, reporting
5 conduct or speaking out in a way that's not
6 favorable to Mr. Romero in the Department of
7 Corrections. So we open the door to all of that.
8 So I think this is a collateral point that I would
9 ask the Court exclude.

10 MR. BECK: It's a collateral point, maybe.
11 But it was not a collateral point when on redirect
12 they asked the question: Do you feel like you're
13 being retaliated against? If that question wasn't
14 asked, Mr. Romero wouldn't be here.

15 MS. DUNCAN: And the only reason I asked
16 that was because the Government elicited this notion
17 that somehow the defense was trying to intimidate
18 Mr. Urtiaga. And so in all fairness, I thought that
19 the jury should know that the allegations ran both
20 ways. I had no other way to rebut it.

21 THE COURT: Let me do this: Before I make
22 any the ruling on cumulative, or how many witnesses
23 we're going to hear on this, I do think that some
24 rebuttal is appropriate, given the questions by the
25 defense. So I'll have to take these questions one

1 at a time. It seems to me they should be very
2 tight.

3 I am going to have to be careful about if
4 all they relied upon was other people telling them
5 of the incident, then I may need to give some
6 limiting instruction that the jury can't rely upon
7 this witness or these witnesses, depending on how
8 many I allow.

9 Use of Title 1, but they simply can say
10 that that was what they used for purposes of
11 classifications. They can't use that as substantive
12 evidence that it was a Type 1 incident; they can
13 just simply use it as evidence of why they treated
14 it administratively as a Type 1 incident. So --

15 MR. BECK: Yeah, I think that's all we're
16 trying to get out, and if a limiting instruction is
17 appropriate, we don't have a problem with that.

18 MS. DUNCAN: Your Honor, you'd limited us
19 to one witness. I'd ask you to limit the witness to
20 one witness for this collateral --

21 THE COURT: Let me hear how it goes. And
22 if it looks like we made it enough with one, we may
23 not need two.

24 MR. BECK: Sure.

25 MS. DUNCAN: Your Honor, I've gotten no

1 discovery related to this. So I don't have any
2 reports from either Ms. Perez or Mr. Romero to
3 prepare to cross-examine them or what they're going
4 to testify. I'd ask for disclosure of that now.

5 MR. BECK: I think we have one report, one
6 copy, that we were just provided.

7 THE COURT: We can make copies for you if
8 you want to --

9 MS. ARMIJO: I do have copies of the
10 police report, but that's not anything that they
11 authored.

12 MR. BECK: I think the report that his
13 name is on is probably what y'all are asking for.

14 MS. DUNCAN: Any reports from what you're
15 going to ask them about.

16 THE COURT: Why don't you get the
17 transcript or send somebody down there so I can be
18 looking at it so I have more firm in mind. Then why
19 don't you give Ms. Standridge --

20 Ms. Standridge, Mr. Beck is going to hand
21 you -- he's identified one report or two?

22 MR. BECK: It's one report, two pages.

23 THE COURT: And if you'll make copies
24 for -- give the Government back their original and
25 give Ms. Duncan hers first, and the other defendants

1 copies, and then give me a copy.

2 THE CLERK: Okay.

3 MR. BECK: So one more question, is how
4 the Court would like to proceed on this, because if
5 Ms. Perez has other information to provide -- so I'm
6 thinking it may make sense just to call Romero
7 first, go with him, and then that way Ms. Perez will
8 still be called. And if we've had enough, we don't
9 have to call her for that.

10 She can testify about whatever else she
11 was going to. If we don't get enough, we can ask a
12 couple of questions. That way we kind of set the
13 Court up to make the decision with Ms. Perez.

14 THE COURT: Does that make sense to you?

15 MS. DUNCAN: Since I don't really know
16 exactly what the witness is going to say --

17 THE COURT: Let's try it and see how it
18 goes, and reserve your rights to object. Go with
19 one or two witnesses, or question either one.

20 MS. DUNCAN: Thank you, Your Honor.

21 MS. JACKS: Excuse me. The defendants are
22 asking for a bathroom break.

23 MR. BECK: We can take a break.

24 (The following proceedings were held in
25 open court.)

1 THE COURT: All right. It's a little
2 early, but why don't we go ahead and take our
3 morning break. We're getting close to it. And then
4 we'll come back in and resume taking the evidence.

5 All rise.

6 (The jury left the courtroom.)

7 THE COURT: All right. We'll be in recess
8 for about 15 minutes.

9 (The Court stood in recess.)

10 THE COURT: All right. We'll go on the
11 record. Mr. Villa, did you have something you
12 needed to raise?

13 MR. VILLA: Quickly, Judge. We had the
14 discussion when we went over the jury instructions
15 about the count numbering and using a different
16 number, and it just didn't sit with me well,
17 although understood -- I went back through opening
18 and nobody mentioned it.

19 Here's the problem that I just realized:
20 All of the plea agreements that have been entered
21 into evidence say the count that the individual pled
22 guilty to. So Mario Rodriguez, Timothy Martinez,
23 Jerry Montoya, Jerry Armenta, they all plead guilty
24 to Counts 6 and 7.

25 And in the jury instructions, we're, of

1 course, saying they're charged alongside our
2 clients, and that's been, of course, the focus of
3 the cross-examinations, and things. And if the jury
4 gets back there to deliberate and they're looking at
5 the plea agreements and trying to square it with the
6 jury instructions, I think we have a problem if we
7 don't stick with the counts. Since we're working on
8 the jury instructions, I just wanted to bring that
9 up now.

10 THE COURT: Well, I guess I see a tension
11 between the defendants' request to take out all the
12 names of the people in the indictment, and then the
13 request to renumber them to number them consistently
14 with the indictment. That seems to be the
15 intention. Do you see what I'm saying?

16 MR. VILLA: I do. And I guess if the
17 Court was going to allow the defendants -- all the
18 defendants in, if that's what the Government wants,
19 if the Court rules that way, it's a big problem.

20 But even if the Court grants our request
21 to take the other co-defendants out, we still have a
22 problem, because the jury is going to be looking
23 at -- okay, you know, is Mr. Perez guilty of Count 1
24 and 2, is Mr. Sanchez guilty of Count 1 and 2, is
25 Mr. Herrera guilty --

1 THE COURT: Well, I'm not saying -- maybe
2 we're not communicating. But you're saying, take
3 out the names, for example, in Count 6. Take out
4 all the names except these four defendants. And yet
5 you're saying number it 6, so they can figure out
6 whether the people that have pled can match up with
7 that plea agreement. To me, that's kind of
8 inconsistent.

9 MR. VILLA: I think there is some
10 inconsistency, but, I think, either way you go with
11 that, a problem gets created, based on the evidence.

12 THE COURT: Well, I don't want to get hung
13 up on it. What are the defendants -- are you
14 speaking for all the defendants, that you want the
15 names out, but then it being original numbers; is
16 that the defendants' position?

17 MR. VILLA: I'm not speaking for anybody
18 else yet. I'm saying regardless of what we --

19 THE COURT: Why don't y'all group real
20 quickly and let me know. I don't know how much I
21 can get done this morning, but let me know. So why
22 don't y'all group there, and see if y'all can come
23 up with a position before we get the jury back in?

24 MR. VILLA: I --

25 THE COURT: Well, y'all just group.

1 MS. JACKS: So Your Honor, with respect to
2 that question and that question, only, the
3 defendants' position is that the original count
4 numbers should stand. And that the identities of
5 defendants who are no longer, or who are not for
6 this jury to consider, in other words, any defendant
7 other than the trial defendants, should be deleted
8 from the charges.

9 THE COURT: Okay. All right. All rise.

10 (The jury entered the courtroom.)

11 THE COURT: All right. Everyone be
12 seated.

13 All right. Does the Government have its
14 first rebuttal evidence or witness, Mr. Beck?

15 MR. BECK: Yes, Your Honor, the United
16 States calls Anthony Romero.

17 THE COURT: Mr. Romero, if you'll come up
18 to the witness box on my right, your left, before
19 you're seated, Ms. Standridge, my courtroom deputy,
20 will swear you in.

21 ANTHONY ALEXANDER ROMERO,
22 after having been first duly sworn under oath,
23 was questioned, and testified as follows:

24 THE CLERK: Please be seated. State and
25 spell your name for the record.

1 THE WITNESS: My name is Anthony Alexander
2 Romero, A-N-T-H-O-N-Y. Last name Romero,
3 R-O-M-E-R-O.

4 THE COURT: Mr. Romero.
5 Mr. Beck?

6 DIRECT EXAMINATION
7 BY MR. BECK:

8 Q. Good morning, Mr. Romero.

9 A. Good morning, sir.

10 Q. How are you employed?

11 A. I am employed with the New Mexico
12 Corrections Department.

13 Q. And what's your position?

14 A. The position I hold is deputy director of
15 adult prisons.

16 Q. And to whom do you report as deputy
17 director of adult prisons?

18 A. I report to the director of adult prisons,
19 who is German Franco.

20 Q. What are your duties as deputy director of
21 adult prisons?

22 A. My duties consist of assisting the wardens
23 statewide. We have 11 prisons throughout our state,
24 public and private. And I assist those wardens with
25 their daily operations, and I serve as a conduit

1 between them and the executive to obtain any
2 resources, assist them with any challenges they may
3 have in their operations.

4 Q. How long have you been the deputy director
5 of adult prisons?

6 A. Approximately six years.

7 Q. And what did you before that?

8 A. I was a warden.

9 Q. And where were you the warden?

10 A. I've been the warden at several
11 institutions -- various institutions around the
12 state. Starting in Los Lunas, Grants, New Mexico --

13 Q. And what's the facility in Los Lunas?

14 A. It's Central.

15 Q. And what's the facility in Grants?

16 A. It's the Western New Mexico Correctional
17 Facility.

18 Q. Where else have you been warden?

19 A. The Penitentiary of New Mexico in Santa
20 Fe. And I've served in brief positions, you know,
21 either they were searching for a warden, or the
22 warden was out on leave, out at Southern New Mexico
23 Correctional Facility here in Las Cruces, and at one
24 of our prisons in Roswell.

25 Q. How long have you been with the

1 Corrections Department?

2 A. I've been with the New Mexico Corrections
3 Department approximately 12 years.

4 Q. What did you do before that?

5 A. I was in the private sector in
6 corrections, and I worked for a company called
7 Cornell Companies.

8 Q. In November of 2017, were you the acting
9 warden at the Penitentiary of New Mexico?

10 A. That, I was.

11 Q. I want to talk to you a little bit about
12 administrative investigations for personnel matters
13 in the New Mexico Corrections Department. As the
14 acting warden, or as the deputy director of adult
15 prisons, do you play a role in that process?

16 A. I do.

17 Q. And what's your role in that process?

18 A. It is to review the allegations, if you
19 will, and ensure that they are formatted correctly,
20 and they're put into the proper format and
21 referrals, and sent to the proper authorities.

22 Q. What is -- let me ask this question first:
23 Does the New Mexico Corrections Department have an
24 internal affairs investigation procedure?

25 A. We do.

1 Q. Is that separate from any criminal
2 investigation that may be going on in the state?

3 A. It is.

4 Q. What is the -- what is the body that
5 performs the New Mexico Corrections Department
6 internal investigations?

7 A. It's a unit called OPS, which is our
8 Office of Professional Standards.

9 Q. Are they involved in every incident
10 related to corrections officers that happen within
11 the New Mexico Corrections Department?

12 A. They are.

13 Q. Are the incidents that happen within the
14 New Mexico Corrections Department, are they
15 distinguished in tiers, or levels, somehow?

16 A. They are determined by -- we call them
17 types. So you have a Type 1 and then you'll have a
18 Type 2.

19 Q. What is a Type 1? And is that an
20 incident -- is that what you call it a Type 1
21 incident?

22 A. Correct.

23 Q. And what is a Type 1 incident?

24 A. A Type 1 incident usually involves a
25 serious assault, any type of criminal allegation, or

1 a criminal nexus to the allegation that will warrant
2 an investigator outside of that affected unit or
3 where the incident occurred. It will entail an
4 investigator outside of that specific facility.

5 Q. And how is that different from -- I think
6 you said a Type 2 incident?

7 A. A Type 2 is a lower classification of
8 incident, which are a little less significant.
9 There's not a criminal nexus. They don't usually
10 entail serious violent offenses that -- a local
11 investigator from that assigned facility can
12 investigate.

13 Q. So if I understand right, when there is a
14 Type 1 incident, the investigation is separate from
15 persons who work at that particular facility; is
16 that right?

17 A. Correct.

18 Q. Does the office of professional standards
19 of the New Mexico Corrections Department operate
20 separately from the New Mexico State Police, if
21 they're investigating any type of conduct that has
22 criminal allegations?

23 A. They do.

24 Q. Mr. Romero, are you aware of a referral to
25 the office of professional standards for an

1 incident -- or do you remember being involved in
2 that -- for an incident that happened in 2017
3 involving Edward Urtiaga?

4 A. Yes, sir, I am.

5 Q. What type of incident did that referral
6 arise from?

7 MS. DUNCAN: Your Honor, I'm going to
8 object as calling for hearsay.

9 THE COURT: Well, why don't you lead him,
10 and see if we can avoid the hearsay. So why don't
11 you lead him and let me listen to your question and
12 see if we can avoid hearsay.

13 BY MR. BECK:

14 Q. In November of 2017, were you involved in
15 the referral of an incident involving Edward Urtiaga
16 to the office of professional standards?

17 A. Yes, sir.

18 Q. Were you involved in that incident because
19 you were acting warden at the time?

20 A. Correct.

21 Q. And how is it -- what's the requirement
22 for the acting warden at the time to be involved in
23 a referral to a Type 1 -- or in a referral to the
24 office of professional standards?

25 A. In that capacity you have to review the

1 information, ensure that all of the pertinent
2 information is included in the referral and sent to
3 the proper source.

4 Q. All right. And did you review those
5 referrals, as a matter of practice, as the acting
6 warden?

7 A. I did.

8 Q. Did you review the referrals for all of
9 the incidents to OPS while you were acting warden at
10 PNM?

11 A. I did, sir.

12 Q. Okay. And those reviews included the
13 referral of Edward Urtiaga in November 15 of 2017;
14 right?

15 A. That's correct.

16 Q. And because you were involved as the
17 warden of the Penitentiary of New Mexico, because
18 you were involved in the referral of that incident
19 to OPS, it was a Type 1 incident; is that right?

20 A. That is correct.

21 Q. You would not be involved if it was just a
22 Type 2 incident; is that right?

23 A. If it's a Type 2 incident, if there is any
24 type of referral done, then it's still going to be
25 received in the warden's office and reviewed by the

1 warden's office.

2 Q. Okay. But with Type 2 incidents, you
3 don't refer those to OPS, do you?

4 A. We do.

5 Q. Okay. My misunderstanding. For the
6 referral of Edward Urtiaga to OPS in November 2017,
7 you did not actually write the report in the
8 referral; do I have that right?

9 A. That is correct.

10 Q. And I think you said earlier, your job was
11 simply to review the referral that was written by
12 somebody else, to ensure that it was properly
13 submitted to the office of professional services,
14 right?

15 A. You are correct.

16 Q. The referral for Edward Urtiaga in 2017,
17 is that OPS internal affairs investigation still
18 ongoing?

19 A. It is.

20 Q. Does that mean that it is still being
21 investigated?

22 A. My understanding is, it is.

23 Q. Do you expect that that internal
24 investigation will be complete at some time in the
25 future?

1 A. I hope so, yes.

2 Q. And does that -- do you know if the state
3 investigation is still open -- State Police
4 investigation?

5 MS. DUNCAN: Your Honor, I'm going to
6 object. This is going to rely on hearsay.

7 MR. BECK: I'll withdraw that question.
8 I'll ask a different question, Your Honor.

9 BY MR. BECK:

10 Q. Let me ask it this way: Does the office
11 of professional standards investigation into Mr.
12 Urtiaga depend on the State Police investigation
13 being open or closed?

14 A. No, sir.

15 Q. Is that because they operate separately?

16 A. That is correct.

17 Q. The referral for Edward Urtiaga, that is a
18 Type 1 incident because it involves allegation of
19 criminal conduct?

20 MS. DUNCAN: Your Honor, I'm going to
21 object to the questions.

22 THE COURT: Well, the only way I think he
23 would know this, is if people told him this. So I
24 think we've already gotten out the classification.
25 So I don't think that we need to have that question

1 answered.

2 And I'll also advise and instruct the jury
3 that just because Mr. Romero is using this as a Type
4 1 incident, that's what he used it for, for his
5 internal administrative proceedings. But the jury
6 cannot use that as evidence of the classification.

7 That's his classification, but you can't
8 use it in your determination of the charges in this
9 case. It's simply evidence of what he was relying
10 on to make the determination. So you can't rely
11 upon the characterization of it as a Type 1 as the
12 truth of the matter.

13 Mr. Beck?

14 BY MR. BECK:

15 Q. Does your referral to the office of
16 professional standards for a Type 1 incident, does
17 it depend upon why that incident is classified as a
18 Type 1, or does it just get referred because it is a
19 Type 1?

20 A. No, it's classified on the type of
21 situation that we are dealing with.

22 Q. And I guess my question is -- well, let me
23 make sure I -- let me make sure I go back and
24 understand that: Are there Type 1 incidents that do
25 not involve allegations of, or nexus to, criminal

1 conduct?

2 A. There are.

3 Q. And what are those types?

4 A. One that comes to mind is undue
5 familiarity.

6 Q. What does that mean?

7 A. It's when we have any of our staff that
8 had become unduly familiar with our inmate
9 population, whether that be -- for instance, inmate
10 correspondence, talking on the telephone, you know,
11 that's not so much a criminal matter, if you will.
12 But it's definitely, you know, a zero tolerance for
13 the department. It constitutes a very serious
14 security breach.

15 Q. Okay. Familiarity. Are there any others
16 that you can think of that are not -- that do not
17 have -- let me ask you this: Is having sex with an
18 inmate in an institution -- is that a crime?

19 A. It is.

20 Q. And does that fall under familiarity?

21 A. It could.

22 Q. Okay. But to be fair, it sounds like
23 familiarity is much broader than that?

24 A. Correct, sir.

25 Q. So other than familiarity, nexus to

1 criminal conduct, allegations of criminal conduct,
2 is there anything else that falls under a Tier 1?

3 A. None that come to mind right now.

4 Q. Okay. When there's -- so I want to talk
5 to you for a minute about familiarity that does not
6 have -- that's not nexus, or allegations of criminal
7 conduct. Just, as you said, maybe too much
8 correspondence with a corrections officer.

9 If there is that Type 1 incident, as
10 acting warden would you still go through the same
11 procedure that you did in this case with Edward
12 Urtiaga, of reviewing the referral to make sure it's
13 right, and then providing it to OPS?

14 A. Yes, I would.

15 Q. So it sounds to me like -- do you have any
16 discretion in these types of referrals to not refer
17 them to OPS when you receive the complaint?

18 A. No. I have a duty to refer them.

19 Q. That was my question, thank you.

20 MR. BECK: Nothing further.

21 THE COURT: Thank you, Mr. Beck.

22 Ms. Duncan, do you have cross-examination
23 of Mr. Romero?

24 MS. DUNCAN: One moment, Your Honor.

25 THE COURT: You may.

1 MS. DUNCAN: Your Honor, I have no
2 questions for this witness.

3 THE COURT: Thank you, Ms. Duncan.

4 Does anybody else have cross-examination
5 of Mr. Romero?

6 MS. JACKS: No.

7 MR. VILLA: No, Your Honor.

8 THE COURT: All right. Mr. Romero, you
9 may step down.

10 Is there any reason Mr. Romero cannot be
11 excused, Mr. Beck?

12 MR. BECK: Not from the Government, Your
13 Honor.

14 THE COURT: Any of the other defendants?

15 All right. Not hearing any objection, you
16 are excused from the proceedings. Thank you for
17 your testimony.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: All right. Ms. Armijo, does
20 the Government have its next rebuttal evidence or
21 witness?

22 MS. ARMIJO: Yes, Your Honor, Wendy Perez.

23 MR. JEWKES: Your Honor, what's the name
24 again, please?

25 MS. ARMIJO: Wendy Perez.

1 MS. DUNCAN: Your Honor, while this
2 witness is being brought to the courtroom, may we
3 approach?

4 THE COURT: You may.

5 (The following proceedings were held at
6 the bench.)

7 MS. DUNCAN: I'm just wondering if we're
8 done with the Urtiaga incident to elicit questions.

9 MS. ARMIJO: She is the one that wrote up
10 the referral, so I will ask her, did she write up
11 the referral and then send it to --

12 THE COURT: And do what?

13 MS. ARMIJO: Then she sent to it Anthony
14 Romero.

15 THE COURT: Is that all you're asking her
16 about the Urtiaga incident?

17 MS. DUNCAN: Not what's in the referral or
18 why?

19 MS. ARMIJO: No.

20 MS. DUNCAN: Did you write the referral
21 and give it to Romero?

22 MS. ARMIJO: Yes.

23 MS. DUNCAN: I have no objection.

24 (The following proceedings were held in
25 open court.)

1 THE COURT: Ms. Perez, if you'll come up
2 and stand next to the witness box on my right, your
3 left, before you're seated, Ms. Standridge, my
4 courtroom deputy, will swear you in.

5 WENDY PEREZ,
6 after having been first duly sworn under oath,
7 was questioned, and testified as follows:

8 THE CLERK: Please be seated. State and
9 spell your name for the record.

10 THE WITNESS: My name is Wendy Perez,
11 W-E-N-D-Y. Last name, P-E-R-E-Z.

12 THE COURT: Ms. Perez.

13 Ms. Armijo?

14 MS. ARMIJO: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. ARMIJO:

17 Q. Good morning, Ms. Perez.

18 A. Good morning.

19 Q. How are you employed?

20 A. I am employed with the Department of
21 Corrections.

22 Q. In what capacity?

23 A. I'm a unit manager.

24 Q. How long have you worked for the
25 Corrections Department?

1 A. Since 2001.

2 Q. And what different capacity have you held
3 up until your current one?

4 A. I started as a secretary, went to
5 classification officer, went to records,
6 classification, and then a unit manager, and then
7 acting deputy warden.

8 Q. Okay. And now your current position is
9 what?

10 A. Unit manager.

11 Q. Can you explain to the jury what a unit
12 manager is?

13 A. A unit manager -- basically, I oversee the
14 capacity of the facility in my unit, which houses 96
15 inmates, and the staff members and the inmates that
16 live there, to ensure their safety and the
17 well-being of the staff, and make sure that
18 everything basically ran correctly within that unit.

19 Q. And where are you currently assigned?

20 A. At the North facility in Housing Unit 3.

21 Q. North facility is part of PNM?

22 A. Yes.

23 Q. All right. Now, you said that you were a
24 caseworker. When were you a caseworker?

25 A. When? I was a caseworker in -- probably

1 in 2003 to 2007, and then again in 2011 to 2014.

2 Q. All right. And what does a caseworker do?

3 A. A caseworker is responsible for
4 maintaining and managing the inmates' file,
5 auditing, and making sure that they're classified
6 correctly, doing attorney phone calls, and doing --
7 conducting rounds.

8 Q. And in that position, where did you have
9 that position?

10 A. I was also at the Penitentiary of New
11 Mexico, in Housing Unit 3.

12 Q. And what was your other position -- and
13 what was your position, then, at approximately 2015,
14 through '16?

15 A. I was the unit manager.

16 Q. And where were you the unit manager of?

17 A. Housing Unit 3 at the North facility.

18 Q. Are you familiar with Rudy Perez?

19 A. Yes.

20 Q. And how so?

21 A. He was an inmate that was housed at the
22 penitentiary at the housing unit that I was
23 managing.

24 Q. All right. And I'm going to show Exhibit
25 Number 768, which has been admitted into evidence.

1 Are you familiar with this type of
2 document?

3 A. Yes.

4 Q. How so?

5 A. We work with them on a daily basis. It
6 shows the location history of an inmate, where he is
7 housed.

8 Q. Okay. And so -- and on the left -- on the
9 left, it says start date and time. Would that be
10 the date and the time that an inmate went to a
11 location?

12 A. Correct.

13 Q. And then it says, end date and time.
14 Would that be the end date and time that the person
15 left that facility?

16 A. Correct.

17 Q. And then I wanted to focus in, if we can,
18 around June 17, 2015.

19 A. Okay.

20 Q. Do you see whose location history this is?

21 A. Yes, inmate Rudy Perez.

22 Q. And now looking at June 17 of 2015, what
23 does it indicate?

24 A. He arrived at PNM 6/17 at 2:40.

25 Q. All right. And at -- and then where was

1 he housed while he was at PNM?

2 A. He was in 3B, X-105.

3 Q. And then what type of a cell is that?

4 A. In X pod at the North facility, it has
5 handicapped ramps, and due to Rudy's disability, he
6 was housed in X pod, and it also has a shower in
7 X-105.

8 Q. Okay. So is that a special pod for
9 persons that have special needs?

10 A. Yes.

11 Q. And was that why -- one of the reasons he
12 was put in that pod?

13 A. Correct.

14 Q. And I should say, that cell?

15 A. Yes.

16 Q. Now, is that pod designated for any
17 certain type of inmate? Meaning have you heard the
18 term like an SNM pod?

19 A. I've heard the term. But he was housed
20 there based on his needs.

21 Q. So were there other SNM Gang members in
22 that pod?

23 A. Yes.

24 Q. Okay. But he was specifically given that
25 cell because of his needs; is that correct?

1 A. Yes.

2 Q. Okay. And then there's also -- in
3 10/20/2015 through -- it looks like April 18 of
4 2016, what kind of cell was that?

5 A. The 3A, Q-101?

6 Q. Yes.

7 A. That's the same thing. There's two pods
8 at the North facility that has accessibility for
9 handicap ramps and showers in the cells, which is Q
10 pod and X pod.

11 Q. Okay. And so was he then moved to the Q
12 pod 101-S? Is that a pod for special needs?

13 A. Correct.

14 Q. And is that why he was placed in that
15 cell?

16 A. Yes.

17 Q. Okay. And in that pod, were there SNM
18 Gang members?

19 A. Yes.

20 Q. Okay. Now, in reference to that pod, you
21 indicated that's at the North; is that correct?

22 A. That is correct.

23 Q. Okay. And what classification was that?
24 We've heard different things about Level 4, Level 6.
25 And I know that the terms have changed throughout

1 the years; is that correct?

2 A. Yes.

3 Q. Okay. So going back to 2015 through April
4 of 2016, what would you label that pod?

5 A. I'd label it -- It had a mixture of --
6 because we hold interim inmates, we hold
7 disciplinary inmates, we hold pending transfer
8 inmates, we hold inmates that aren't able to be
9 housed anywhere else due to bed space, or inmates
10 that need to be in that particular pod because of
11 their disabilities.

12 Q. Okay. So was -- so you would not call it,
13 like, specifically, a Level 6 or special management
14 unit?

15 A. No.

16 Q. Now -- so but there were SNM members in
17 that pod?

18 A. Yes, there was.

19 Q. Now, were you aware of Mr. Perez' special
20 needs requirements?

21 A. Yes, I was.

22 Q. What were those special needs?

23 A. He was actually confined to a wheelchair
24 at the time.

25 Q. Okay. And did eventually, while he was

1 there at any time, did he actually ever go into a
2 walker?

3 A. Not that I can recall, no.

4 Q. Do you recall if -- what is rec time?

5 A. He goes outdoors for recreation for an
6 hour.

7 Q. Okay. When you say he, is that just --

8 A. An inmate, in general, gets afforded the
9 opportunity to go outside for an hour.

10 Q. And I'm again going to focus in, now, on
11 early 2016. Did Rudy Perez go out for rec?

12 A. To my knowledge, he did. I really don't
13 see them that much go outside, because I'm inside,
14 and the officers are the ones that run the
15 recreation.

16 MS. FOX-YOUNG: Objection, foundation,
17 based upon the witness' testimony.

18 THE COURT: She testified about -- that
19 was a foundational question, so I'll allow that
20 answer.

21 BY MS. ARMIJO:

22 Q. Now, did you have contact with Rudy Perez
23 during that time?

24 A. Yes.

25 Q. Okay. How was it that you would have

1 contact with Rudy Perez?

2 A. I would conduct rounds, and also
3 whenever -- I used to conduct rounds once or twice a
4 week, so I would interact with every inmate at that
5 time.

6 Q. Okay. When you say "conduct rounds," what
7 do you mean?

8 A. I would go door to door and talk to them
9 about any issues or any concerns they might be
10 having, so I'd go talk to them.

11 Q. Okay. And when you say issues they may be
12 having, what do you mean, in general? Is that
13 limited to anything, or is it kind of like a check
14 welfare on them?

15 A. It was both. I would check to make sure
16 they were okay, if they needed anything, if I could
17 help them with anything. I would knock at their
18 window and say, "Hey, are you guys doing all right?"
19 I always take a notebook, and write down any needs
20 or any issues that may arise at that time on my
21 rounds.

22 Q. And during that time period, can you
23 describe Rudy Perez, as far as, did you ever see
24 him, or have any encounters with him where you felt
25 that he was incoherent or unable to converse with

1 you?

2 A. No. He was actually kind of -- I guess I
3 would say like rambunctious.

4 Q. Okay. So you never saw him in any sort of
5 condition where you were concerned about his
6 physical health?

7 A. No.

8 Q. Did you ever have any concerns about his
9 mental health, based upon your interaction with him?

10 A. No.

11 Q. Now, are there nurses that go to inmates
12 to dispense medicine?

13 A. Yes.

14 Q. And how often do they dispense medicine?

15 A. At least three times a day.

16 Q. And when they dispense medicine, do they
17 just leave it at the door, or put it with the food,
18 or do they actually have to see the inmate take
19 medicine?

20 A. They have to see them take the medicine.

21 Q. And the person that does that, is that a
22 medical staff?

23 A. Yes.

24 Q. Are you aware of whether or not Mr. Perez
25 had medicines that he would be -- distributed to him

1 on a daily basis?

2 A. I'm not sure.

3 Q. Okay. But if there were medical records
4 that reflected that he did have medicine, that would
5 be distributed by a nurse?

6 A. Yes.

7 Q. In addition to the nurse that went and
8 distributed the medicine, is there also medical
9 personnel that goes around to the inmates to check
10 their welfare?

11 A. If there's a need for medical, what
12 happens is they get correctional officers. They do
13 30-minute checks at the North facility. So there is
14 always a staff member in there. And if there was
15 need, they would call Medical.

16 And also there is mental health providers
17 that do door-to-door checks, as well.

18 Q. You beat me to the mental health. First,
19 I'll go to the medical staff. You indicated that
20 Corrections does 30-minute checks?

21 A. Yes.

22 Q. Okay. So when you say 30-minute checks,
23 do you mean literally every 30 minutes they go
24 around and check on the inmates?

25 A. Yes.

1 Q. And if they saw a concern for anything
2 medical, Medical would be called right away?

3 A. Yes. Correctional staff are required to
4 carry radios, and if there was a need, we'd call
5 medical and get ahold of them, and say if they
6 can -- to come to the inmate if there was that need.

7 Q. Okay. Now, going back to the other part
8 of your answer was mental health. Do you have
9 mental health providers at -- with Corrections?

10 A. Yes.

11 Q. And specifically, going to your unit. How
12 often would mental health providers go around?

13 A. At least once a week.

14 Q. Okay. And when they go around, do they
15 check the welfare of the inmates?

16 A. Yes.

17 Q. And would that have been done with Rudy
18 Perez when he was in your unit?

19 A. Yes.

20 Q. Now, are you aware of -- while you were in
21 charge of the unit that Rudy Perez was in at PNM,
22 are you aware of whether or not there were any
23 safety concerns for Rudy Perez?

24 A. No.

25 Q. If there are safety concerns --

1 MS. FOX-YOUNG: Your Honor, I think the
2 witness testified she was not aware.

3 THE COURT: Lay the foundation. Let's see
4 what her answer is.

5 BY MS. ARMIJO:

6 Q. If there are -- if you were aware of any
7 safety concerns for any individual, are there ways
8 to keep individuals safe?

9 A. Yes.

10 Q. What are the ways to keep individuals
11 safe?

12 A. If there was a safety concern, due to his
13 affiliation, I would have got ahold of STIU. We
14 would have pulled the inmate out, and talked to him
15 to see what was going on.

16 Q. Okay. And are you aware of sometimes
17 inmates being put in administrative segregation?

18 A. Yes.

19 Q. Is that one way to deal with an inmate
20 that has -- that there are safety concerns about?

21 A. Yes.

22 Q. And are the restrictions any more severe
23 in administrative seg than the restrictions that
24 people in the unit that Rudy Perez was housed in,
25 any different, or is it basically the same thing,

1 just alone?

2 MS. FOX-YOUNG: Objection. Ms. Armijo is
3 testifying and foundation.

4 THE COURT: Overruled.

5 A. Will you repeat that? I'm sorry.

6 BY MS. ARMIJO:

7 Q. Sure. Now, the term "Administrative Seg,"
8 I'll break it down a little bit. Administrative Seg
9 means administrative segregation?

10 A. Correct.

11 Q. Okay. Are the restrictions with
12 administrative segregation any different than the
13 unit in which Rudy Perez was being housed in, in
14 2016?

15 A. No. The only thing that's sometimes
16 different is depending administrative seg is if they
17 have suspension of privileges, as far as like TVs,
18 and stuff like that. But as far as housing, no,
19 there is no difference.

20 Q. Now, I'm going to show you a document, and
21 it's marked as Government's Exhibit 790.

22 MS. FOX-YOUNG: Your Honor, may we
23 approach?

24 THE COURT: You may.

25 (The following proceedings were held at

1 the bench.)

2 MS. FOX-YOUNG: Your Honor, I have several
3 objections to the admission of this document.
4 First, it's internally inconsistent. You'll see
5 that the last sentence of the area that the
6 Government has not redacted reads, "Defendant stayed
7 in that same cell until April 18, 2015, when he was
8 transferred back to SNMCF." He wasn't transferred
9 back until April of 2016.

10 THE COURT: Hold on just a second. You're
11 not going to try to introduce this document, are
12 you?

13 MS. ARMIJO: Yes.

14 THE COURT: Well, I probably am not going
15 to allow the Government to put in its own
16 statements, so if you're going to do something else
17 with it, then maybe that will allay some of Ms.
18 Fox-Young's concerns. But just as far as putting in
19 your own statements, I probably won't allow it.

20 MS. ARMIJO: Okay.

21 MR. CASTELLANO: Under the Rule of
22 Completeness, Your Honor, because it stands out.
23 And the statement doesn't accurately reflect what
24 happened for Rudy Perez, the balance of the
25 statement, so it's not out of the context --

1 THE COURT: Well, I read it earlier when I
2 saw more of this briefing, and I didn't think it was
3 needed at the time that the defendants put it in. I
4 don't think I would change my analysis, I think come
5 in under the Rule of Completeness. So there would
6 be other things you want to do with this document,
7 but if it's not going to come in for substantive
8 evidence, does that take care of most of your
9 concerns?

10 MS. FOX-YOUNG: Yes, Your Honor, although
11 at this point I don't see how Ms. Armijo can impeach
12 the witness or any testimony with it, or refresh.

13 THE COURT: Let's see what she can do.

14 MR. CASTELLANO: It also rebuts statements
15 from the exhibit, Your Honor, so it is rebuttal.

16 THE COURT: So I won't necessarily
17 preclude her from questioning. We'll just have to
18 take it a question at a time.

19 MS. FOX-YOUNG: Thank you.

20 (The following proceedings were held in
21 open court.)

22 THE COURT: Ms. Armijo.

23 BY MS. ARMIJO:

24 Q. All right. Sorry, Ms. Perez. Now, going
25 back to Mr. Perez' placement back at PNM, are you

1 aware of why he was transferred back to PNM, or at
2 least one of the reasons why he was transferred back
3 to PNM?

4 A. The initial transfer was due to the
5 investigation of the homicide that happened at
6 Southern.

7 Q. All right. Was there also a disciplinary?

8 A. Yes. He was also in segregation --
9 disciplinary segregation.

10 Q. Okay. Now, after completing the sanction,
11 was he transferred back to Southern New Mexico
12 Correctional Facility?

13 A. Not right away, no.

14 Q. Okay. Now, Southern New Mexico
15 Correctional Facility, did they have special
16 units -- special cells like the one that you
17 described at the time for inmates with special
18 needs?

19 A. Not that I'm aware of.

20 Q. So did Rudy Perez stay at the North
21 facility based upon that issue?

22 A. Yes. He needed to be housed where there
23 was accessibility for his needs.

24 Q. Okay. And at any point in time when Rudy
25 Perez was -- and did you actually -- were you the

1 one that actually would have been kind of in charge
2 of where Rudy Perez was housed? I mean, did you
3 have a little bit of input into that?

4 A. As far as the cell location, yes.

5 Q. Okay. And the cell location being within
6 a pod that had SNM Gang members?

7 A. Correct.

8 Q. Now, at any point in time when Rudy Perez
9 was up at PNM at the North facility when you were
10 the unit manager, did you have any concerns for his
11 safety, other than any issues with his special
12 needs?

13 A. No.

14 Q. Now, I'm going to fast-forward a little
15 bit to your position. Are you aware of who
16 Lieutenant Urtiaga is?

17 A. Yes.

18 Q. And I'm going to go back to November of
19 2017. What was your position?

20 A. I was acting deputy warden.

21 Q. And as acting deputy warden, are you
22 familiar when incidents happen, do you have -- and I
23 say incidents. Incidents involving correctional
24 officers, what would be something that you would
25 have to do?

1 A. If there is an incident, usually there is
2 what's called an SIR, Serious Incident Report, and
3 we review them.

4 Q. Okay. And in reference to Lieutenant
5 Urtiaga, did you actually prepare a referral for him
6 that was sent to Anthony Romero?

7 A. Yes.

8 Q. What type of referral was that?

9 A. It was --

10 MS. DUNCAN: I'm going to object.

11 THE COURT: Well, I think we've already
12 had testimony on this. Sustained.

13 BY MS. ARMIJO:

14 Q. Okay. Were you the one that actually
15 wrote the referral?

16 A. Yes.

17 Q. Okay. And then what did do you with that
18 referral?

19 A. I sent it out, and I sent it to the OPS
20 referral, which includes several different people.

21 Q. And directly -- and would that include
22 Anthony Romero?

23 A. Yes.

24 MS. ARMIJO: If I may just have a moment,
25 Your Honor?

1 THE COURT: You may.

2 BY MS. ARMIJO:

3 Q. And can we display FW-1. All right. If
4 we can go to, I believe, it would be page 3.

5 All right, Ms. Perez, do you see in this
6 document that's been admitted, and there is a
7 sentence, there, and you will see that this is a
8 court document that's been admitted, at least a
9 partial court document.

10 Now, there is a line in there that says,
11 "After completing his sanction, defendant" -- and
12 we're referring to Rudy Perez -- "was not
13 transferred back to SNMCF due to safety concerns
14 that SNMCF had for the defendant in that facility."
15 Do you see that?

16 A. Yes.

17 Q. Okay. Are you -- other than concerns
18 regarding his special needs, were you aware of any
19 other safety concerns for Rudy Perez?

20 A. No.

21 MS. ARMIJO: Thank you. I pass the
22 witness.

23 THE COURT: Thank you, Ms. Armijo.

24 Ms. Fox-Young, do you have
25 cross-examination for Ms. Perez?

1 MS. FOX-YOUNG: Thank you, Your Honor.

2 THE COURT: Ms. Fox-Young.

3 CROSS-EXAMINATION

4 BY MS. FOX-YOUNG:

5 Q. Good morning, Ms. Perez.

6 A. Good morning.

7 Q. You agree with me that your entire career
8 with the Department of Corrections has been at the
9 Penitentiary of New Mexico?

10 A. Yes.

11 Q. And that's since 2001?

12 A. Correct.

13 Q. And in your various capacities working
14 for -- the abbreviation is PNM; right?

15 A. Correct.

16 Q. Have you been working for the director of
17 adult prisons?

18 A. I fall under his chain of command. I
19 don't work directly for him, because I fall under
20 the deputy warden, warden, at the penitentiary.

21 Q. Okay, well, let's start at the top. Who
22 is at the very top of the chain of command?

23 A. Secretary of Corrections.

24 Q. And who is underneath the Secretary of
25 Corrections?

1 A. There's deputy secretaries.

2 Q. How many?

3 A. It depends. I've seen -- throughout my
4 career I've seen one, I've seen two, I've seen
5 three. It just depends.

6 Q. If you remember, how many deputy
7 secretaries of corrections were there in the fall of
8 2015?

9 A. I don't recall how many.

10 Q. There was at least one?

11 A. At least one.

12 Q. And who is underneath deputy secretary or
13 secretaries?

14 A. The director.

15 Q. Of adult prisons?

16 A. Yes.

17 Q. Okay. And who is underneath the director
18 of adult prisons, who you also report to?

19 A. There is a deputy director.

20 Q. Okay. And who is under the deputy
21 director of adult prisons?

22 A. It branches out, because we have a warden
23 of each facility that answers directly to them.

24 Q. Okay. So for you, in your chain of
25 command, there is a warden to the Penitentiary of

1 New Mexico?

2 A. Yes.

3 Q. Underneath the deputy?

4 A. Deputy, yes.

5 Q. And in the fall of 2015, can you remind me
6 what position you held at PNM?

7 A. I was the unit manager.

8 Q. And were there other people in the chain
9 of command between the warden and you at that time?

10 A. Yes, there was a deputy warden.

11 Q. Anybody else?

12 A. No.

13 Q. Okay. So in the fall of 2015, there were
14 at least six people above you in the chain of
15 command; is that right?

16 A. Well, it's kind of -- I mean, we don't
17 really see the director every day. I mean, we fall
18 directly under the warden and the deputy warden,
19 because the director, they oversee the whole entire
20 state.

21 Q. Sure. And I'm not asking who you see.
22 I'm just asking in the organizational structure of
23 the Department, you had at least six people above
24 you?

25 A. As far as rank, yes.

1 Q. Okay. And you've never worked at the
2 Southern New Mexico Correctional Facility?

3 A. No.

4 Q. Have you ever visited the Southern New
5 Mexico Correctional Facility?

6 A. Yes.

7 Q. When was that?

8 A. It was probably back in 2007, maybe.

9 Q. Okay. Do you have any knowledge of the
10 facilities at the Southern New Mexico Correctional
11 Facility?

12 A. To a certain extent, yes.

13 Q. After 2007?

14 A. Yes.

15 Q. And what is that knowledge?

16 A. Due to the fact that we do referrals to
17 other prisons, so we have to be aware of the
18 population that they have at other prisons.

19 Q. Okay. And do you know who Warden Mulheron
20 is?

21 A. Mr. Mulheron, yes.

22 Q. Mulheron. You never worked for him?

23 A. No.

24 Q. And you don't currently work for him?

25 A. No.

1 Q. And it's not your testimony, is it, that
2 Rudy Perez was moved to the Penitentiary of New
3 Mexico in the summer of 2015 because he's
4 handicapped; right?

5 A. No.

6 Q. You gave some other reasons for that?

7 A. Yes.

8 Q. And let's take a look at Defendants'
9 Exhibit V24. This is, I believe, identical to the
10 exhibit that you were just looking at. It's already
11 in evidence. So you just looked at Government's
12 768.

13 Do you recognize this document, Ms. Perez?

14 A. Yes.

15 Q. And this is also Mr. Perez' location
16 history; right?

17 A. Correct.

18 Q. And let's just zoom in on the period
19 beginning October 2013 and ending June 2015.

20 All right. Ms. Perez, can you tell me,
21 looking at this location history, where Mr. Perez
22 was, beginning October 3 of 2013?

23 A. At Southern.

24 Q. And did he remain at Southern until June
25 17 of 2015?

1 A. Correct.

2 Q. Okay. And if you don't know, that's fine,
3 but tell me, if you know, did Mr. Perez have a
4 wheelchair or a walker between October 3, 2013 and
5 June 17 of 2015?

6 A. I didn't know him at the time.

7 Q. So you don't know if he had one?

8 A. No.

9 Q. But you agree that he was at Southern
10 during that time?

11 A. Yes.

12 Q. And he was housed there continuously?

13 A. Up until 2015, yes.

14 Q. I think you said that Q pod was a special
15 needs pod; is that right?

16 A. Correct.

17 Q. Was Billy Cordova housed in Q pod?

18 A. I don't remember.

19 Q. You referenced making rounds on the pods
20 or housing units during 2015; right?

21 A. Yes.

22 Q. How often did you make those rounds?

23 A. At least once to twice a week.

24 Q. Did you document that?

25 A. No, I don't have to. I actually -- they

1 are documented. I'm required to sign in weekly.

2 Q. Okay. But did you ever produce documents
3 reflecting what you learned on your rounds?

4 A. No, I would take just basic handwritten
5 notes on a piece -- a notebook, but there wasn't no
6 document I had to fill out.

7 Q. And how many housing units did you make
8 rounds on?

9 A. In my side, there is eight pods, so I go
10 into eight.

11 Q. And that would happen once or twice a
12 week?

13 A. Correct.

14 Q. And how long did it take you to do that?

15 A. It varies. I mean, I can go finish it in
16 40 minutes, or I can be in there for three hours.
17 It just depends.

18 Q. So you'd walk through the pod and take a
19 look at everybody?

20 A. Yes, door to door.

21 Q. And you're not a medical doctor; right?

22 A. No.

23 Q. And you're not a medical nurse?

24 A. No.

25 Q. You're not a mental health professional?

1 A. No.

2 Q. And you're not offering any opinions as to
3 whether Mr. Perez had any physical or mental
4 problems at the time that you were making rounds;
5 right?

6 A. I mean, I can't assess him. But just
7 based on looking at him, I could tell he was
8 physically disabled.

9 Q. You didn't examine him?

10 A. No.

11 Q. And do you know how many times Rudy Perez
12 actually went to Medical during the course of his
13 stay at the Penitentiary of New Mexico?

14 A. No, I don't.

15 Q. You have no idea?

16 A. No.

17 Q. And for what problems he went to Medical?

18 A. No, I wouldn't ask, because it's a HIPAA.

19 Q. And do you know how many times Mr. Perez
20 saw mental health providers while he was at the
21 Penitentiary of New Mexico?

22 A. At least once a week, because the
23 providers go door to door.

24 Q. Okay. And you know that because that's
25 policy?

1 A. Well, they're also required to sign in.
2 And based on that, they're housed there, and they're
3 locked up for 23 hours out of the day; they are
4 required to go door to door.

5 Q. So you know that Mr. Perez saw a mental
6 health provider at least once a week; right?

7 A. Yes.

8 Q. But you don't know whether he saw a mental
9 health provider more than that?

10 A. No.

11 Q. And you don't know anything about his
12 particular visits with mental health providers
13 during that time?

14 A. No.

15 Q. In the fall of 2015, do you recall
16 authorizing Mr. Perez' transfer back to the Southern
17 New Mexico Correctional Facility?

18 A. I wouldn't have authorized it.

19 Q. Do you recall reviewing the
20 reclassification forms and the classification
21 committee documents at that time?

22 A. I had reviewed the forms.

23 Q. Would it refresh your memory if I showed
24 you a reclassification scoring form and the
25 supervisory review?

1 A. It would have to be specific to him if I
2 did generate them.

3 Q. Sure. So if I showed you the form
4 specific to Rudy Perez, would that refresh your
5 memory?

6 A. It might.

7 MS. FOX-YOUNG: Your Honor, may I
8 approach?

9 THE COURT: You may.

10 BY MS. FOX-YOUNG:

11 Q. All right. Ms. Perez, I'll just ask you
12 to take a look. Is this your signature?

13 A. Yes.

14 Q. Okay. And just take a look at this
15 document and tell me if that refreshes your memory
16 with regard to authorization of that transfer?

17 A. It was a referral, it's not authorization.
18 The inmates are required to get rescored every six
19 months, so the first one which says he scores 16
20 points.

21 Q. I'm just asking about this one.

22 A. It's just -- what we do is just a
23 referral.

24 Q. Ms. Perez, before you read anything from
25 the document, I don't want you to say anything

1 that's hearsay. But I just want to ask if this
2 refreshes your memory?

3 A. Yes.

4 Q. Okay, thank you. And does it refresh your
5 memory about a referral to Level 4?

6 A. Yes.

7 Q. And was that in October of 2015?

8 A. What I recall, yes.

9 Q. And you signed that document as a
10 supervisor?

11 A. Yes.

12 Q. Okay. Now, I think you said that you
13 weren't aware of any safety concern regarding Mr.
14 Perez; is that right?

15 A. Yes.

16 Q. Now, did you ever interview Mr. Perez
17 about the circumstances under which a piece was
18 taken from his walker?

19 A. No.

20 Q. Okay. You don't know anything about that?

21 A. No.

22 Q. Are you aware of whether Warden Mulheron
23 did?

24 A. I have no idea.

25 Q. Are you aware of whether Ernie Holguin

1 did?

2 A. I have no idea.

3 Q. Can you tell me if those people were at
4 the Southern New Mexico Correctional Facility in
5 2015?

6 A. I have no idea. I don't work at Southern.

7 Q. Okay. You don't know what was going on at
8 Southern?

9 A. No.

10 Q. And let's take a look at Exhibit FW-1. If
11 we can just take a look at page 7, the last page.
12 Actually, let's take look at page 3.

13 Do you see right here -- first of all, you
14 were -- you just answered some questions about this
15 document; right?

16 A. Yes.

17 Q. And you understand what this document is?

18 A. Yeah, it's a court document.

19 Q. You understand that this is a document
20 filed by Ms. Armijo in this case?

21 A. Yes.

22 Q. Okay. And you see where it says
23 "Defendant," defendant is Mr. Rudy Perez; right?

24 A. Yes.

25 Q. That he was not transferred back to

1 Southern New Mexico Correctional Facility due to
2 safety concerns that Southern New Mexico
3 Correctional Facility had for the defendant in that
4 facility. Do you see where it says that?

5 A. Yes.

6 Q. But you can't testify today about whether
7 or not Southern New Mexico Correctional Facility had
8 safety concerns; right?

9 A. No.

10 Q. Okay. Now, let's look at the last page of
11 this document. And you see where it says this was
12 filed in November -- on November 3 of 2017; right
13 here at the top?

14 A. Yes.

15 Q. Okay. That's just a few months ago,
16 right?

17 A. Yes.

18 Q. And you see it was filed by Ms. Maria
19 Armijo?

20 A. Yes.

21 Q. Okay, thank you.

22 MS. FOX-YOUNG: No further questions.

23 THE COURT: Thank you, Ms. Fox-Young.

24 Ms. Duncan, do you have anything?

25 MS. DUNCAN: I do not, Your Honor.

1 THE COURT: Anybody else have any
2 cross-examination of Ms. Perez?

3 All right. Ms. Armijo, do you have
4 redirect of Ms. Perez?

5 MS. ARMIJO: Yes, Your Honor.

6 THE COURT: Ms. Armijo.

7 MS. ARMIJO: Your Honor, I would like to
8 move in -- I forgot to ask her the location
9 histories of two other people with this witness.

10 Your Honor, may we approach?

11 THE COURT: You may.

12 (The following proceedings were held at
13 the bench.)

14 THE COURT: Who are these for?

15 MS. ARMIJO: They're location histories
16 for Joe Patrick Martinez, who is also known as
17 Cheech, and David Calbert.

18 MS. JACKS: And, Your Honor, I object.
19 It's beyond the scope of direct, and it's also not
20 within the content of the rebuttal that I was told
21 by Mr. Beck. We made our deal who it was --

22 MR. CASTELLANO: We agree with that.
23 We're looking for the exhibits, as we did at the end
24 of the case before we rested. We said we'd ask to
25 reopen the case if there were more exhibits. So if

1 we don't do it through this witness -- I just
2 thought, she was on the stand, maybe we could. If
3 not, we can reopen the case and reintroduce it.

4 THE COURT: Let me ask this: Do you have
5 any problem if we just mark and admit these exhibits
6 without any discussion from the witnesses?

7 MS. JACKS: I object. They should have
8 been put in the case-in-chief if they wanted.

9 THE COURT: We did have that agreement.
10 After we'd go through, we'd see if the exhibit lists
11 of the Court's matched that of the Government's,
12 that we reserve that much for them to do that.

13 MS. JACKS: If that was the agreement, you
14 overruled my objection. I'd point out to the
15 Government two additional exhibits that were not
16 admitted, and asked for their agreement to admit
17 them, and they refused. So those were portions of
18 the plea agreement. I'll go look at my email. I
19 think it was Jake Armijo and Mario Rodriguez.

20 THE COURT: Do y'all have problems with
21 those?

22 MS. ARMIJO: The issue was not as to the
23 plea agreement with Jake Armijo, but with Mario
24 Rodriguez. The issue is he was never questioned
25 about it by anybody, was not impeached with it, and

1 what we have is not a signed copy by him. It's just
2 a copy that was signed by Mr. Castellano. We don't
3 know where the copy that was signed by Mr. Rodriguez
4 is. And we'd have to go back to look in the notes
5 of the plea hearing to see if it was even referred
6 to or not. I honestly can't remember.

7 MR. CASTELLANO: We don't remember if we
8 executed that document at the plea hearing. That's
9 normally what happens before the magistrate judge.
10 We hand the document to the judge, the judge looks
11 at it, signs it, and returns it to us. And I don't
12 have any recollection of that happening. I signed
13 the document, but the copy we have doesn't have the
14 two additional signatures by counsel and Mr.
15 Rodriguez.

16 THE COURT: Well, did he plead pursuant to
17 a plea agreement?

18 MR. CASTELLANO: He did, Your Honor. He
19 pled pursuant to a plea agreement, but we don't have
20 any indication that the addendum was properly
21 executed.

22 MS. ARMIJO: The plea agreement is in
23 evidence, but the addendum itself we had marked as
24 an exhibit, but it was never discussed with him or
25 impeached with him. It was never brought up because

1 it wasn't signed by him.

2 MS. FOX-YOUNG: Your Honor, the Government
3 certainly brought up -- I'll have to go back and
4 look at the transcript to see if the document,
5 itself, was, but I think the Court ought to order
6 the Government to provide one. It was provided as
7 an exhibit with Mr. Castellano's signature.

8 THE COURT: I don't think they're
9 denying -- and tell me if this is wrong -- you're
10 not denying that it was discussed at the plea
11 colloquy, but nobody is certain that the addendum
12 itself was executed.

13 MR. CASTELLANO: I don't remember if it
14 was discussed.

15 THE COURT: But it was there --

16 MR. CASTELLANO: There is no doubt we
17 presented it to Mr. Rodriguez, that we showed him
18 beforehand. But I don't think it was actually
19 executed. Only my signature is on that document.

20 THE COURT: And this is just the addendum.
21 As far as the plea agreement, it's already in
22 evidence?

23 MR. CASTELLANO: We have no problem with
24 the plea agreement, that's right. There is no
25 indication that we executed that document, which is

1 the addendum with all signatures. Only my signature
2 is on that document.

3 MS. JACKS: Can I make a suggestion? If
4 we're not going to do this with this witness, why
5 don't we finish the witness and work out these
6 problems? Because I think there is a handful of
7 problems -- I've got my notes. The exhibits I have
8 emailed the Government about that were brought to my
9 attention by Ms. Gilbert were 694 and 693.

10 THE COURT: Here's my concern: We've got
11 a witness on the stand. If there is going to be
12 some objection to either authentication or
13 foundation or something like as to these two
14 documents, then it seems to me that I probably need
15 to rule on these two right at the bottom.

16 MS. JACKS: I'll tell you there won't be.
17 I'll withdraw my objection. The point is that we
18 agreed and we agreed, and I'll stick by my word.

19 THE COURT: So we'll just take up a
20 bundle. I'll go ahead and admit -- what are the
21 numbers on these two?

22 MS. ARMIJO: 789 and 788.

23 THE COURT: All right. So without
24 objection, Government's Exhibit 789 and 788 will be
25 admitted into evidence.

1 MS. JACKS: And there are going to be some
2 additional documents, I'm understanding, if
3 that's --

4 THE COURT: Y'all are in pretty good
5 shape. You're still putting on your case, so you're
6 not in any danger here.

7 MS. JACKS: Actually, I think we are,
8 because the two that we were talking about, two that
9 should -- may have been admitted in their
10 case-in-chief and weren't, through their oversight
11 or ours.

12 THE COURT: I don't know if you'd walked
13 away. But what the Government's position is on this
14 addendum to -- I'm sorry, Mario Rodriguez -- they're
15 saying that as far as their memory is concerned, it
16 was never executed by Mr. Rodriguez. That doesn't
17 have his signature on it. I don't know what to do
18 about that. Do you?

19 MS. JACKS: I think I'd like to talk to
20 them about it at some point and make a suggestion.

21 THE COURT: Talk to the Government.

22 MS. JACKS: And make a suggestion, and I
23 don't know that we have to do that right now.

24 MR. CASTELLANO: And we may have no
25 objection to Jacob Armijo's plea agreement or

1 addendum.

2 THE COURT: What number is that?

3 MS. JACKS: 694.

4 THE COURT: Any objection to 694 coming
5 into evidence? Not hearing any, 694 is in evidence.
6 So we're down to one on this addendum.

7 MS. FOX-YOUNG: I guess we don't have to
8 take it up right now, but perhaps we could enter
9 into a stipulation rather than fighting about --

10 THE COURT: That's what Ms. Jacks is --
11 ((The following proceedings were held in
12 open court.))

13 THE COURT: All right. Ms. Armijo?

14 MS. JACKS: Your Honor, for the record, we
15 withdraw our objection.

16 THE COURT: All right. So Government's
17 Exhibit 789 and 788 are admitted into evidence, as
18 well as 694.

19 (Government Exhibits 789, 788, and 694
20 admitted.)

21 THE COURT: All right. Ms. Armijo?

22 MS. ARMIJO: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. ARMIJO:

25 Q. Ms. Perez, you were asked about whether or

1 not Southern had any safety concerns -- any
2 personnel at Southern had safety concerns for Mr.
3 Perez that you knew of. If there were safety
4 concerns for Mr. Perez when he was transferred,
5 would you have been made aware of that?

6 MS. FOX-YOUNG: Your Honor, the witness
7 testified she didn't know if there were any.

8 THE COURT: Well, lay a foundation to see
9 if she's got anything to say on this question.

10 BY MS. ARMIJO:

11 Q. When somebody is transferred into your
12 unit, are you made aware of whether or not there are
13 any special housing needs?

14 A. Yes.

15 Q. And that would have been -- and is that
16 something that goes with any inmate, for instance,
17 that is transferred from Southern New Mexico
18 Correctional Facility into your unit?

19 A. Yes.

20 Q. Were you made aware of any safety concerns
21 from Southern New Mexico Correctional Facility with
22 regard to Rudy Perez when he was transferred into
23 your unit?

24 A. Yes, I would have been aware of it.

25 Q. And were there any?

1 A. No.

2 Q. When you made your rounds, you were
3 talking about whether or not you documented all your
4 rounds. If there was something noteworthy that came
5 up during your rounds, would you have documented it?

6 A. Depending on the issue, yes.

7 Q. And did you have any reason to call for
8 either mental health or medical health for Rudy
9 Perez, based upon your rounds?

10 A. No.

11 Q. And you were asked about him being your
12 referral to Level 4. Are SNM inmates still
13 classified as Level 4?

14 A. Yes.

15 MS. ARMIJO: Your Honor, may I have a
16 moment?

17 THE COURT: You may.

18 MS. ARMIJO: That's all I have. Thank you
19 Your Honor.

20 THE COURT: Thank you, Ms. Armijo.

21 Let's see. Do you have anything further?

22 MS. FOX-YOUNG: Nothing further, Your
23 Honor.

24 THE COURT: All right. Ms. Perez, you may
25 step down.

1 Is there any reason that Ms. Perez cannot
2 be excused from the proceedings, Ms. Armijo?

3 MS. ARMIJO: No, Your Honor.

4 THE COURT: Any objection from the
5 defendants?

6 MS. JACKS: No.

7 THE COURT: Not hearing any, then, you are
8 excused from the proceedings. Thank you for your
9 testimony.

10 THE WITNESS: Thank you.

11 THE COURT: All right. Does the
12 Government have its next rebuttal evidence or
13 witness?

14 MR. BECK: May we approach?

15 THE COURT: You may.

16 (The following proceedings were held at
17 the bench.)

18 MR. BECK: It's been about an hour and a
19 half -- we are -- that's all of our rebuttal
20 witnesses.

21 THE COURT: You're done?

22 MR. BECK: So just Agent Acee.

23 MS. ARMIJO: With the exception if
24 something comes out when they call Acee back on
25 that, we be allowed cross-examination, I guess it

1 would be, to bring it out and not be stuck with the
2 American Rule, because technically it would still be
3 their case, and then if we need to rebut something
4 with Special Agent Acee, we do it during
5 cross-examination. We just don't want to be
6 prohibited by them saying we're limited to theirs,
7 because otherwise we would be calling Special Agent
8 Acee now.

9 THE COURT: Let me see if I could propose
10 something on this. Would everybody agree that the
11 rebuttal, now, of the Government is over, with the
12 possible exception that they be allowed to call
13 Agent Acee if there is something they need to rebut
14 in the remaining portion of the case.

15 And this is the -- and if the defendants
16 have -- want to allow further questions at the time
17 that he's on the stand during the Government's or
18 the defendant's case, then we can just take care of
19 it there. Otherwise, the Government be allowed to
20 bring up to recall Mr. Acee for anything they have
21 as far as the rebuttal.

22 MS. DUNCAN: I'm a little confused. Could
23 I have clarification from the Government? Are there
24 topics they'd call Agent Acee as a rebuttal witness
25 right now?

1 MR. VILLA: Your Honor --

2 THE COURT: Let them answer. I think it's
3 a good question.

4 MR. VILLA: It's time for a recess.

5 THE COURT: Let's try to deal with this
6 right now.

7 MR. BECK: So I think the only area that
8 we would have with him right now is the tablets, the
9 cooperators' tablets, and that there were some that
10 were -- the defendants' tablets -- why don't you say
11 it?

12 MR. CASTELLANO: So one of the questions
13 raised by the defense was whether or not there was
14 any misconduct by the defendants in the courtroom by
15 their tablets. And the answer was no. But there is
16 misconduct on behalf of at least two of the
17 defendants that we would try to bring in, in
18 rebuttal.

19 Actually, at this point, it could possibly
20 be on cross-examination of Agent Acee in their case.
21 Mr. Baca had the shank in his cell. And Rudy Perez
22 had three incidents: In December of last year,
23 somebody mailed to him an envelope or letter that
24 had, I think, cocaine, and maybe either heroin or
25 Suboxone in it. He did not receive it, but it was

1 mailed to him.

2 Then he had a more recent incident where
3 he attempted to get a syringe through the port in
4 his door. There is a video where he's using a cane
5 to try to pull a tray near to him from medical
6 staff, was trying to get a syringe. And then there
7 is a third incident with him. I guess the other
8 issue is the issue with his diet, dietary
9 restriction, and the food was eating contrary to his
10 diet. So there is a concern about whether he was
11 playing games with the system. So one incident with
12 Mr. Baca and three incidents with Mr. Perez.

13 THE COURT: How is Mr. Acee going to know
14 those things, other than what was told to him by
15 other people?

16 MR. CASTELLANO: He would say he's part of
17 those investigations. But if necessary, we could
18 bring in the witnesses.

19 MR. VILLA: They should have done that.

20 MS. DUNCAN: Yes.

21 THE COURT: I guess I'm not seeing how Mr.
22 Acee can testify about those incidents. If you
23 think that there is some personal knowledge he has,
24 but just listening to it, it sounds like it's all
25 going to be things that were told to him by

1 Corrections.

2 When exactly was this question that was
3 asked about the tablets, you're using this to rebut?
4 When was that done?

5 MR. CASTELLANO: It was probably Monday,
6 when he was on direct examination by the defense.

7 THE COURT: Of Mr. Hayes at that time?

8 MR. CASTELLANO: That's correct.

9 MR. VILLA: This was a question not about
10 whether these defendants compromised their tablets.
11 It wasn't whether they did anything else. This is
12 improper rebuttal.

13 THE COURT: I'll be glad to look at the
14 transcript, but if it was only about whether they
15 compromised their tablets in the courtroom, seems to
16 me it would probably being going too far to say that
17 the Government can now get into disciplinary conduct
18 at the prison.

19 So y'all can look at the transcript, and
20 if it's tied to the tablets in the courtroom, then
21 I'll probably exclude as rebuttal evidence any
22 disciplinary conduct at the facility.

23 MR. CASTELLANO: We'll look at it, Your
24 Honor.

25 THE COURT: All right. So with that

1 answer to your question --

2 MS. DUNCAN: Sounds like they don't have
3 any rebuttal.

4 MR. BECK: I think that's right.

5 MS. DUNCAN: So I guess I'm wondering, I
6 don't understand their request to go beyond the
7 American Rule. You're going to be cross-examining
8 based on what we elicit, correct?

9 MR. CASTELLANO: Yes.

10 THE COURT: Let me ask this about the
11 agreement, since we're a little bit -- in a little
12 bit different -- was the agreement by both sides
13 that after rebuttal was done, which it appears to be
14 done now, that Mr. Acee be called by the Government,
15 and that would be -- by the defendants, and then
16 that would be the end of the case? Was that the
17 anticipation?

18 MR. BECK: I think it was. And so I
19 think -- I think -- I mean, I want to hold all of us
20 to that, and hold myself to that. I couldn't
21 anticipate the things that would come up
22 unanticipated.

23 So far with two, and I think regarding
24 direct of Special Agent Acee, nothing has come up so
25 far. And so I don't anticipate that anything will.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 And I think the Court has been good about holding us
2 to limited rebuttal. And I think it's fair of the
3 Court to limit us, and even a little bit more, with
4 what happens here. Because we did make that
5 agreement --

6 THE COURT: Let me do this, then: I won't
7 grant Mr. Castellano's request for ignoring the
8 American Rule. I'll just try to apply it as fairly
9 and faithfully as I can. And if y'all can tie
10 something to, you know, that's in their
11 case-in-chief, not trying to slip in some evidence
12 that should have been in your case-in-chief, if you
13 can tie it to theirs, I'll certainly listen. But at
14 least at the moment why don't we plan on going into
15 Acee. I guess we're in the direct.

16 MR. BECK: Still direct.

17 THE COURT: With the anticipation that the
18 Government crosses with Mr. Acee, it will be subject
19 to the American Rule, and I'll try to be as fair as
20 I can.

21 MR. BECK: Sure. And what I'll offer to
22 even I think makes it a little more fair, since it
23 was my agreement, is that if there is something that
24 we think we may recall him on fairly, that we'll
25 approach in cross-examination.

1 So that I think it would be more fair,
2 then, they get the final redirect of Special Agent
3 Acee, if we were going to bring that up on
4 cross-examination, violation of the American Rule,
5 so they could still have the last word.

6 THE COURT: Okay. But I guess my thoughts
7 are that I think probably to be faithful to the
8 agreement that you reached, and be faithful to where
9 we are in the trial, you can ask, of course, but I
10 probably am not going to allow you to call Mr. Acee
11 again.

12 MR. BECK: Right. I think that's fair.

13 MR. JEWKES: Your Honor, one thing that
14 complicates this discussion is the fact that Daniel
15 Sanchez filed a motion about 8:40-something this
16 morning, alleging serious misconduct, requesting a
17 remedy. And depending upon what the Court does in
18 that regard, there may be three witnesses that have
19 to be recalled, maybe four.

20 THE COURT: No, I understand. And this is
21 all subject to what the defendants want to do.

22 MR. JEWKES: Yes, sir.

23 MR. BECK: Sure.

24 MR. LOWRY: Your Honor, if I may. We're
25 still processing this. And I know it's not the

1 Court's preference, but maybe we could send the jury
2 out for an early lunch and start with Acee at 1:00.
3 So we can finish looking at all the notes and the
4 Rodriguez materials to see if there is anything in
5 there.

6 THE COURT: Okay. All right. I'll do
7 that, then. And we'll just tell them to come back
8 at 1:00.

9 (The following proceedings were held in
10 open court.)

11 THE COURT: All right. Does the
12 Government have further rebuttal witnesses or
13 evidence it wishes to present?

14 MR. BECK: Not at this time, Your Honor.

15 THE COURT: All right.

16 All right. So we're going to continue
17 with Mr. Acee's direct examination by the
18 defendants. But I'm going to go ahead and let you
19 go to lunch now, and then bring you back a little
20 bit later. So I'm going to bring you back at 1:00,
21 so that will give you a little extra time.

22 Because we are changing stages here of the
23 case, I'm going to remind you of a few things that
24 are especially important. Until the trial is
25 completed, you're not to discuss this case with

1 anyone, whether it's members of your family, people
2 involved in the trial, or anyone else, and that
3 includes your fellow jurors. If anyone approaches
4 and tries to discuss the trial with you, please let
5 me know about it immediately.

6 Also, you must not read or listen to any
7 news reports of the trial. Don't get on the
8 internet and do any research for purposes of this
9 case. And finally, you must not talk with any
10 person who is not involved in the trial, even if it
11 doesn't have anything to do with the trial. If you
12 need to speak to me about anything, simply give a
13 note to one of the Court Security Officers or Ms.
14 Standridge.

15 You may hear these a little more,
16 depending upon how we proceed this afternoon, but if
17 you don't, do keep them in mind each time we take a
18 break.

19 All right. We'll see you back at 1:00.

20 All rise.

21 (The jury left the courtroom.)

22 THE COURT: All right. Everyone be
23 seated. Let me use a few minutes before we all take
24 our break. I will need to give Ms. Bean a break.

25 Let me ask the Government, on these jury

1 instructions, do you care about the numbering of the
2 counts, and also whether the people that are listed
3 in the indictment remain or come out?

4 MR. CASTELLANO: We would prefer that the
5 names remain in. As I stated before, I think it
6 gives the jury a road map of who was involved in
7 each count.

8 As to the numbering, it does make sense
9 that the numbers line up with the plea agreements,
10 in that they understand that it's the same count or
11 same conduct that a cooperator pled to, and for
12 which the defendants are excused. So that I agree,
13 normally the numbering makes sense to just have one,
14 two, and three, but under the circumstances of
15 having other documents in the case, it could be
16 confusing for the jury.

17 THE COURT: All right. Let me ask, y'all
18 have had a little bit of time to think about my
19 comments on the modified, modified Allen
20 instruction. I saw Ms. Jacks shaking her head no.
21 So the answer may still be that you want it out. Is
22 that what the defendants want?

23 MS. JACKS: We don't want the instruction.
24 I think we all agreed on that Sunday.

25 MR. VILLA: That's right.

1 THE COURT: All right. So I just thought
2 you hadn't heard my comments. So do prepare that if
3 the jury is stuck, I will give the modified Allen
4 instruction, which I think is a heavier hand than
5 the modified, modified.

6 Also, y'all had agreed to take out the
7 Tenth Circuit pattern jury instruction on
8 possession. I did show you one that you hadn't
9 seen. This is the new Tenth Circuit pattern
10 instruction. After reviewing that, do you still
11 want that out, or do you want that in?

12 MS. JACKS: I think we should talk about
13 it among ourselves. I do think that it might have
14 been an oversight that we deleted it. Because I
15 think possession of a controlled substance is an
16 issue in the case. Possession of controlled
17 substance, I think, is an issue in regards to the
18 racketeering activity. So that may have been an
19 oversight on our part, but we need to talk about it.

20 THE COURT: All right. Well, I'll leave
21 that at the present time. Has the Government gotten
22 back on its position on the conspiracy to commit
23 aggravated assault, resulting in serious bodily
24 injury as to Mr. Baca?

25 MR. CASTELLANO: Yes, Your Honor. We had

1 discussed it with the appellate section, and feel
2 comfortable moving forward with that charge.

3 THE COURT: Okay. Well, I'll make a
4 decision on that. If you have anything to give me,
5 I'd be welcome to look at it. I guess I'm leaning
6 toward dismissing it. So unless I see something,
7 probably in writing, I'm going to take it out of the
8 jury instructions.

9 MR. CASTELLANO: We'll submit something in
10 writing.

11 THE COURT: You've got something pretty
12 quick, Ms. Bhalla?

13 MS. BHALLA: Yes, Your Honor. In regards
14 to the motion that Defendant Herrera raised with the
15 Court this morning, I didn't know if the Court --
16 I've pulled the relevant documents that we discussed
17 that were disclosed late and labeled as Exhibit F as
18 in Frank, Z as in Zebra, just for the Court's
19 review. If the Court would like to review it, I can
20 tender it, and I don't believe there is an objection
21 from the Government.

22 THE COURT: Well, I'm trying to figure out
23 what you filed this morning. Because I got Mr.
24 Sanchez' motion and Mr. Baca's motion, but I don't
25 know if I got anything from you.

1 MS. BHALLA: I haven't -- I raised it
2 orally, Your Honor. I'm working on filing that
3 motion now, but I wanted to give you the exhibit to
4 the motion for the Court to view, and concerns to
5 our oral motion, if that's all right.

6 THE COURT: All right. No objection from
7 the Government?

8 MR. BECK: No, Your Honor.

9 MS. BHALLA: Thank you, your Honor.

10 THE COURT: All right. Let's go into --
11 I've got to give Ms. Bean a break. I'll see y'all
12 back at 1:00 o'clock.

13 (The Court stood in recess.)

14 THE COURT: All right. We'll go on the
15 record.

16 You should receive here, in just a few
17 minutes, a clean copy of the jury instructions. I
18 did renumber them the best I can, but you might help
19 me out when you're proofing it. But I'll try to
20 proof it. But I did renumber them, and I think
21 they're back to their corresponding number in the
22 indictment.

23 I did leave the defendants in. It seems
24 to me that if we're going to try to work with the
25 jury to match plea agreements, that would help, so I

1 left the names in. I did take out the modified,
2 modified Allen instruction. And the rest of it is
3 reflected in the rough draft I gave out this
4 morning.

5 All right. Ms. Jacks, I think you might
6 have had the floor, and needed to speak some more.

7 MS. JACKS: I'd be happy to.

8 THE COURT: Okay.

9 MS. JACKS: Your Honor, I'm not sure what
10 exactly the Court is referring to, but I'm assuming
11 the Court's referring to the motion that I filed
12 this morning about Mr. Sanchez' motion to dismiss
13 for the outrageous Government conduct, and
14 withholding Brady evidence that they were aware of
15 for at least 22 days during the course of this
16 trial.

17 THE COURT: Well, given where we are, I
18 guess my thoughts would be to -- you know, it's
19 still your case -- see if you can mitigate any sort
20 of prejudice. But if you need to recall people, I
21 think the Government has signaled that they're not
22 going to oppose that.

23 MS. JACKS: Well, first of all, I would
24 request a hearing to establish how this occurred and
25 on whom to blame it.

1 My concern is there was an interview
2 conducted by an FBI agent and a member of the
3 prosecution team in which a witness, a Government
4 cooperator who was called as a witness in this case,
5 told the Government -- I'm going to read directly
6 from the notes -- that Mr. Sanchez, after the Molina
7 homicide, there were discussions about killing Mr.
8 Sanchez, quote, "because he did not participate in
9 the Molina homicide or even cover the camera like he
10 was supposed to."

11 And according to the notes of Agent Stemo,
12 Mr. Urquizo made these comments in an interview with
13 Government prosecutors on January 22, 2018, about a
14 week or two weeks before he testified in this case.
15 We only got -- we were only informed of this
16 information last night, at approximately 7:15 or
17 7:30 p.m., 22 days after Mr. Urquizo testified.

18 And I would note that the allegations
19 contained -- or the statements contained in these
20 notes, not only affect the examination of Mr.
21 Urquizo, but they would have affected my
22 cross-examination of Jerry Armenta, Jerry Montoya,
23 Mario Rodriguez, David Calbert, Robert Martinez, and
24 Roy Martinez.

25 And I think -- I mean, I think this is an

1 egregious violation of Brady versus Maryland, and I
2 think we ought to get to the bottom of how this
3 happened, why it happened, and who is responsible
4 for it.

5 THE COURT: Well, I guess my reaction is I
6 don't have any problem having a hearing, but I don't
7 think now that is the time to do it.

8 I think what we ought to do is figure out
9 where we're going to go from here with this trial,
10 and with this jury that is waiting on us. And if at
11 some point I need to hold a hearing, I won't deny
12 you a hearing, I'll hold a hearing. But it doesn't
13 seem to me that addresses what we need to do right
14 this minute with the jury.

15 MS. JACKS: Well, I think it does, to the
16 extent that this was done willfully, deliberately,
17 and for the purpose of gaining an advantage in this
18 trial. I think that goes directly to what remedy is
19 appropriate.

20 THE COURT: Well --

21 MS. JACKS: And as I pointed out, not only
22 does this impact our cross-examination of almost
23 every single Government cooperator, but as the Court
24 has noted, and certainly as Government has noted, at
25 times, there has been some tension among the defense

1 teams. And I think if this information had been
2 provided in a timely fashion, a lot of the things
3 that have happened in this trial would have been
4 averted.

5 And I don't think this is the kind of
6 situation where you can just go back and try to mop
7 up the mess. We've been in trial for almost six
8 weeks at this point. And this is a critical fact
9 and a critical statement that's been withheld for a
10 substantial period of time from the defense.

11 THE COURT: All right --

12 MS. JACKS: And I would note, I think the
13 other thing that is just sort of alarming and
14 shocking, and I think goes to the heart of the
15 Government's investigation in this case, is that the
16 302 prepared by Agent Stemo reflecting this January
17 22 conversation is one page, it consists of four
18 paragraphs, and there is absolutely nothing in the
19 302 regarding the exculpatory statements Mr. Urquizo
20 made about Mr. Sanchez.

21 And I've only focused on one, but as I
22 outlined in my motion, according to the notes, there
23 are at least four statements that contradict the
24 theory of the Molina homicide as presented by the
25 Government during these last six weeks of trial.

1 THE COURT: All right. Mr. Beck, how do
2 you feel about conducting that hearing at this time?

3 MR. BECK: Your Honor, a hearing may -- I
4 mean, it may be appropriate, because a lot of this
5 is just misunderstanding. I don't think that the
6 information is really -- is really going to play out
7 as in those notes.

8 I think the information in those notes is
9 entirely consistent as to what happened in that
10 interview, in the pretrial preparations with Mr.
11 Urquizo, is consistent with how the evidence played
12 out in the courtroom, is consistent with the other
13 debriefs, and is consistent with all of the
14 cooperators' testimony so far.

15 I think that those -- that the notes
16 give -- paint an incorrect picture of what really
17 happened in that pretrial proceeding. And so if we
18 do need to -- I mean, if the Court is considering a
19 remedy, here, I think the fair thing would be to
20 conduct a hearing about how this came about.

21 I think probably a different approach
22 could be, as the Court said, to allow them to recall
23 witnesses. They can recall Mr. Urquizo and ask him
24 about those questions. They can recall Ms. Stemo
25 and ask her about those things. They can recall Mr.

1 Sainato, who I believe was at the pretrial
2 interview, to ask about those things, too. So I
3 think there are other ways in which the time could
4 be used at present.

5 THE COURT: Well, the parties probably
6 know this evidence and how it would play out better.
7 Is it your thinking that I ought to hold a hearing
8 at this time, and then that may help the defendants
9 learn some things so that they can make an informed
10 decision as to how to proceed in the trial? Or are
11 you thinking that --

12 MR. BECK: I do.

13 THE COURT: -- we just need to start
14 recalling witnesses?

15 MR. BECK: I do -- I do think it may be --
16 I do think it may be a good idea for them to hold a
17 hearing for -- a hearing, or for -- I mean, I think
18 it's better for them to hear the information from
19 the person who took those notes.

20 It's probably better for them to hear the
21 information outside of the jury's presence, than to
22 confront that person with that information now, in
23 front of the jury.

24 THE COURT: And conduct that hearing now?
25 Is that what you're suggesting?

1 MR. BECK: Yes. I mean, it sounds like
2 the defense wants a hearing. And I'm saying I think
3 it would make things smoother for them to get this
4 information out, outside of the juror's presence,
5 rather than be forced to confront Mr. Sainato or Ms.
6 Stemo in the jury's presence.

7 So maybe if we take a step back, here, I
8 think a lot of what's happened in the last day or
9 two, the defense teams in this case have -- have had
10 a lot of information presented to them in the last
11 week or two. They've had a lot since the beginning
12 of trial. They had a lot the week before the trial.
13 So they are doing, in my opinion, a very good job of
14 understanding this information, and putting
15 information together.

16 And so I think with the amount of
17 information that they have been provided in the last
18 couple days, I think, if you look at the information
19 in a vacuum, it looks very different than if you
20 look at it in the context of the entire case. And
21 so I think that as they've been provided these
22 things in the last couple of days, they have looked
23 at them in the vacuum, understandably so. And so I
24 think they are doing a good job of bringing these
25 points to the Court's attention, and rightfully so.

1 And I think that a hearing now, outside of
2 the jury's presence, would help fit this information
3 in the context of the case for them, and allow them
4 to be better informed as to how to proceed with this
5 new information, than not holding the hearing, and
6 not having the tools to proceed that they may gain
7 from the hearing.

8 THE COURT: Ms. Jacks, do you have a sense
9 as to how long this hearing will last?

10 MS. JACKS: Well, I don't, Your Honor.
11 And I guess -- I mean, I don't know where Agent
12 Stemo or Agent Sainato are. I know that Ms. Bhalla
13 asked for Agent Stemo to remain here last night, but
14 I'm not sure that's the situation.

15 I think the other issue is, obviously, Mr.
16 Beck, himself, is a witness, and I think he ought to
17 be provided the opportunity to confer with counsel.
18 And I certainly don't think he should be conducting
19 the hearing.

20 MR. BECK: Mr. Sainato and Ms. Stemo are
21 here. They are in the courthouse. I've asked them
22 both to stay around because of the documents that
23 were provided.

24 And I think Ms. Jacks has a fair point
25 that, depending on what happens here, I was the one

1 who prepared Lupe Urquizo during that hearing. So I
2 don't disagree with her that I could be -- that's
3 why there are other agents involved, but --

4 THE COURT: If those two witnesses are
5 here and ready to go, does that give you some idea
6 of an estimate of how long the hearing will last?

7 MS. JACKS: Your Honor, in consulting with
8 Mr. Jewkes, we think it would take two,
9 two-and-a-half hours.

10 THE COURT: Well, why don't I have --
11 excuse me.

12 Ms. Standridge, tell the jury that if
13 they'd like to leave the building and come back
14 about 3:30.

15 MS. JACKS: Or 3:00, maybe.

16 THE COURT: Okay. All right. Does that
17 work for you, Mr. Beck?

18 MR. BECK: Sure, that's fine.

19 THE COURT: Does that work for everybody
20 else?

21 MS. BHALLA: Your Honor, if I may, I think
22 that works for us. I think if they're going to have
23 those two witnesses here, I would want to confer
24 with the other defense counsel, but it might be also
25 the time for us to perhaps conduct a little bit of

1 voir dire about the contents of the box that were
2 disclosed yesterday during court, since I believe
3 those agents would be able to testify to that.

4 I don't know if anybody wants to deal with
5 that now or later, what their positions would be,
6 but it's just -- when we're thinking about that, it
7 might be the time to address this as well, Your
8 Honor. I'm not sure.

9 MS. JACKS: Your Honor, I agree with Ms.
10 Bhalla. Over the lunch hour, we prepared a list and
11 tried to summarize some of the documents that were
12 provided yesterday afternoon that were allegedly
13 from Mario Rodriguez's property, and how those
14 related to our cross-examinations of the witnesses,
15 or how those would have related to our
16 cross-examination of the witnesses in this case.
17 And I think the agents would be Sainato and Stemo
18 for that issue, as well.

19 THE COURT: Do you agree with that, Mr.
20 Beck?

21 MR. BECK: Yes.

22 THE COURT: Does that change, then, the
23 estimate of two hours? Have them back at 3:00, or
24 should they let them go for a little bit longer?

25 MS. JACKS: Your Honor, I think if we're

1 going to do this, I would think that the prudent
2 thing would be to give the jury the rest of the day
3 off.

4 THE COURT: Well, I'd rather work with an
5 informed estimate. Not a single juror lives here in
6 Las Cruces, so we're not doing them any favors by
7 taking the day off. They're going to be stuck
8 somewhere.

9 MS. FOX-YOUNG: Your Honor --

10 THE COURT: Now, I just want an estimate
11 right at the moment. So defendants, why don't y'all
12 group and give me the best estimate right at the
13 moment? I'll hear what you have to say.

14 MS. FOX-YOUNG: Along the lines of the
15 estimate, Mr. Perez joins, and we would like to
16 participate in this motion.

17 MS. JACKS: Your Honor, we've had a chance
18 to confer, and I think all of us would say until
19 4:00 p.m.

20 THE COURT: What's your estimate, Mr.
21 Beck?

22 MR. BECK: I would be surprised if it took
23 that long. I think 3:30, at the latest, but I can't
24 say.

25 THE COURT: Well, we probably can use some

1 time --

2 MR. BECK: I agree with that.

3 THE COURT: -- on some things.

4 So Ms. Standridge, if nobody has any
5 problem, I'm not going to call them back in here.
6 I'll just have Ms. Standridge go and tell them that
7 I'm going to meet with the attorneys this afternoon
8 so they're free to leave the courthouse. If they'll
9 be back in the jury room at 4:00. Anybody have any
10 objection to proceeding that way?

11 MS. BHALLA: No, thank you, Your Honor.

12 THE COURT: Not hearing any, we'll have
13 Ms. Standridge speak to the jury and tell them they
14 need to be back at 4:00.

15 All right. Ms. Jacks, how do you wish to
16 proceed? Do you want to call your first witness?

17 MS. JACKS: I guess so. Just a minute.
18 May I confer with Mr. Jewkes?

19 THE COURT: You may.

20 MS. JACKS: Your Honor, we'll start with
21 FBI Agent Sainato.

22 THE COURT: Mr. Sainato, if you'll come up
23 and stand next to the witness box on my right, your
24 left, before you're seated, my courtroom deputy, Ms.
25 Standridge, will swear you in.

1 JOSEPH SAINATO,
2 after having been first duly sworn under oath,
3 was questioned, and testified as follows:

4 THE CLERK: State and spell your name for
5 the record.

6 THE WITNESS: Yes, ma'am. My name is
7 Joseph Sainato. It's J-O-S-E-P-H, Sainato,
8 S-A-I-N-A-T-O.

9 THE COURT: Mr. Sainato. Ms. Jacks.

10 DIRECT EXAMINATION

11 BY MS. JACKS:

12 Q. Good afternoon, Agent Sainato.

13 A. Good afternoon.

14 Q. On January 22nd of 2018, did you
15 participate in an interview with a government
16 witness by the name of Lupe Urquizo?

17 A. Yes, ma'am.

18 Q. And who else was present at that
19 interview?

20 A. Matthew Beck from the U.S. Attorney's
21 Office.

22 Q. And what about FBI Agent Nancy Stemo? Was
23 she also there?

24 A. She was not.

25 Q. She was not?

1 A. No, I don't believe so.

2 Q. Did you prepare a 302 in connection -- or
3 was a 302 -- excuse me. Was a 302 prepared in
4 connection with that interview?

5 A. Yes, ma'am.

6 Q. And do you have a copy of it with you
7 there today?

8 A. No, ma'am, I do not.

9 MS. JACKS: Your Honor, I have a page
10 that's Bates stamped 51485, that's dated January 22,
11 2018. May I approach the witness?

12 THE COURT: You may.

13 MS. JACKS: Is Mr. Beck handling this
14 matter? Because I think he's a witness, and I would
15 actually ask that he be excluded.

16 THE COURT: How does the Government and
17 Mr. Beck feel about that?

18 MR. BECK: I don't think so. I mean, I
19 don't think I need to be excluded. We've had -- in
20 this trial, we've had a defense investigator testify
21 with the defense attorney, with whom he was present
22 with one other person. So I don't think that I need
23 to be excluded, but --

24 THE COURT: Well, I think I have to rely
25 heavily upon the Government's representations as to

1 what occurred here, and Mr. Beck's representations
2 are going to be necessary, so I'm not going to
3 exclude him. The Government can decide how they
4 want to handle this hearing, but I think I'm going
5 to have to rely heavily upon the representations of
6 the Government whether they're in sworn form or
7 otherwise.

8 So I'll deny the request to exclude him.

9 MS. JACKS: Well, Your Honor, who is going
10 to be conducting this examination from the
11 Government?

12 MS. ARMIJO: Mr. Castellano and I will be
13 doing it. We're trying to decide that right now.
14 But it will be one of us. She can show us the
15 document.

16 MS. JACKS: Your Honor, given that the
17 Court is disinclined to excuse Mr. Beck, we'd like
18 to call him first, and then we'll take the other
19 witnesses.

20 THE COURT: Any objection to that, Mr.
21 Beck?

22 MR. BECK: Yes, Your Honor. I mean,
23 that's the whole purpose behind having an agent
24 there. But if they're going to call me and if the
25 Court is inclined, I'd like a 15-minute recess to

1 prepare for that. I did not prepare for any of
2 this. But just a 15-minute recess to talk with
3 someone in our office.

4 THE COURT: All right. Well, we'll take a
5 15-minute break.

6 MS. JACKS: Your Honor, I'd ask that Mr.
7 Beck be ordered not to speak with Agent Sainato or
8 Agent Stemo regarding this issue during the recess.

9 MR. BECK: I don't oppose that order, Your
10 Honor.

11 THE COURT: All right. So ordered.

12 (The Court stood in recess.)

13 THE COURT: All right. If everybody is
14 ready to go, we'll go on the record.

15 Ms. Armijo, it looks like you have
16 something to say.

17 MS. ARMIJO: I do, Your Honor. The
18 defense cannot call Mr. Beck without first complying
19 with Touhy. As you know, DOJ employees are subject
20 to Touhy. And so our office is not going to allow
21 him to testify without Touhy being complied with.

22 That being said, we feel that there are
23 other witnesses available to testify about this
24 issue. We have Agent Sainato and Ms. Stemo
25 available. And that is the whole reason why we have

1 agents sit in on pretrial interviews, on debriefs,
2 so that the United States does not become a witness
3 to these meetings.

4 And so we can certainly proceed with that.

5 The good or bad faith issue is not really
6 an issue at this point. What the Court should be
7 focusing in on is whether or not, if there is a
8 breach, if it's material; and whether it's -- what
9 the proper remedy should be, if the Court finds that
10 there is one, is if there's sufficient time to make
11 use of the information.

12 And of course, we would argue that there
13 is sufficient time, even if the Court grants them
14 the time over the weekend, or more time to deal with
15 this issue.

16 So if the Court wants to proceed with the
17 hearing, we would request that we start with Agent
18 Stemo, or Agent Sainato who was on the stand, and
19 that the defense comply with Touhy.

20 THE COURT: Thank you, Ms. Armijo.

21 MS. ARMIJO: Thank you, Your Honor.

22 THE COURT: Ms. Jacks, how do you wish to
23 proceed?

24 MS. JACKS: Your Honor, I would request a
25 continuance of 20 minutes. I'll provide a Touhy

1 letter and provide it to the Government within that
2 time period.

3 THE COURT: Let's go ahead and take up the
4 witnesses. If y'all want to go that way, you can.
5 I guess what I'd ask Ms. Armijo, you know, I have
6 discovery disputes all the time. We've had lots of
7 discovery disputes since I've been in the case.
8 We've always gotten representations from the
9 Government.

10 Would Mr. Beck be willing to at least
11 answer questions, not under oath, but just as an
12 attorney for the Department of Justice? The
13 defendants can direct their questions to the Court.
14 But if Mr. Beck is willing to answer them, just as
15 an officer of the court?

16 MS. ARMIJO: I believe, Your Honor, that
17 if you want me to go and call and see if that would
18 be allowed, I certainly will do so. I feel
19 uncomfortable, just given the conversation that we
20 had with our administration, agreeing to that.

21 But certainly if Ms. Jacks is going to be
22 preparing that, or during that time I can
23 certainly -- or one of us, Mr. Castellano or I, can
24 go out and call and find that information out. If
25 the Court wants to proceed, one of us can do that.

1 THE COURT: Well, let's go ahead with the
2 two FBI agents that we have, and then let's go --
3 y'all got people that can probably check on that
4 while we're doing it and get letters ready. But
5 let's go ahead and use our time to get the testimony
6 from the FBI agents.

7 MS. JACKS: Well, Your Honor, I just spoke
8 with Ms. Bhalla and asked her to take either Agent
9 Stemo or Sainato on the issue of the bag of Mario
10 Rodriguez' property. And while she's doing that,
11 I'll prepare the Touhy letter and submit it to the
12 Government.

13 THE COURT: All right. So who do you want
14 to call, Ms. Bhalla?

15 MS. BHALLA: I think that the -- you know,
16 I may ask the Government for a representation as to
17 who the best witness would be to ask about the box.
18 Because my recollection is that Agent Stemo is the
19 one who reviewed it. If that's the case, we'll
20 start with Agent Stemo. If Sainato is the one who
21 reviewed it, we can start with Agent Sainato.

22 THE COURT: All right. Is he still in the
23 courtroom, or does he need to be brought in the
24 courtroom?

25 MS. ARMIJO: I will get him, Your Honor.

1 THE COURT: All right. Mr. Sainato, if
2 you'll come up and resume your place in the witness
3 box. I'll remind you that you're still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: Ms. Bhalla, if you wish to
6 commence your examination, you may do so at this
7 time.

8 MS. BHALLA: Thank you, Your Honor.

9 THE COURT: Ms. Bhalla.

10 DIRECT EXAMINATION

11 BY MS. BHALLA:

12 Q. Good afternoon.

13 A. Good afternoon, ma'am.

14 Q. Tell me how you say your last name so I
15 don't butcher it.

16 A. Sainato.

17 Q. Agent Sainato, we're going to talk to you
18 about the property box that belonged to Mario
19 Rodriguez. Did you get a chance -- can you tell us
20 how you came to know about that box's existence or
21 how you found it?

22 A. I can start at the beginning.

23 Q. I'd appreciate that.

24 A. Sure, ma'am. The time line is kind of
25 just based off of my memory. And my best

1 recollection is that it was just starting to warm up
2 in Santa Fe, so I'm ballparking, maybe like June of
3 2017. I was at the penitentiary of New Mexico, PNM,
4 with Task Force Officer Chris Cupit, and we were
5 made aware that there was still some SNMers that had
6 property in PNM's storage.

7 Q. Okay.

8 A. And so we decided while we were there,
9 that we would take a look at it to see what was
10 there. It was kind of a nonevent, so I'm fuzzy
11 on --

12 Q. Is that when you found Mario Rodriguez'
13 box?

14 A. It was actually a bag, ma'am.

15 Q. A bag? Sorry.

16 A. But yes.

17 Q. And that was in June of 2015?

18 A. '17.

19 Q. '17. Sorry. See, I'm getting a little
20 tired today. Okay.

21 A. I'm ballparking that, ma'am.

22 Q. Okay. June of 2017. Did you all go
23 through that bag at that time?

24 A. No. We went through some other property.
25 And that was his.

1 Q. Do you know who -- in addition to Mario
2 Rodriguez' bag, were there other bags belonging to
3 SNM members, or boxes, or whatever you want to call
4 it?

5 A. There was other property that we looked
6 at. Who it belonged to, I don't recall.

7 Q. Okay. You don't recall. Did you all have
8 a warrant? What prompted you to go look for the
9 property?

10 A. We were just made aware that it was there.

11 Q. Who made you aware of it?

12 A. I don't recall. It was one of the other
13 STIU officers.

14 Q. So was it an STIU? It was somebody who
15 worked for STIU? It wasn't another FBI agent?

16 A. Correct.

17 Q. Okay. And so STIU made you aware that
18 there was some property belonging to some SNM
19 members?

20 A. Correct.

21 Q. And when you went to review that property,
22 what was your understanding of the purpose of
23 reviewing that property?

24 A. Just to see what was there, ma'am.

25 Q. Okay. Why did you go? Why did you want

1 to go look at it? Did you receive information that
2 it might be material or relevant to the case?

3 A. No.

4 Q. Okay. You were just told to go look
5 through it?

6 A. We were just told that it was there.

7 Q. Okay.

8 A. And if we wanted to look through it, we
9 could.

10 Q. And did you look through it at that time?

11 A. We looked through some of it there. What
12 it actually was, it was inmate property, ma'am. It
13 was mostly clothes, shoes, books.

14 Q. Okay.

15 A. The only thing that sticks out in my
16 mind -- and I know you're going to ask me, and I
17 don't remember who it belonged to -- was that was
18 the first time I'd ever seen what was called a
19 fishing line, and Mr. Cupit explained to me what
20 that was. And I had never seen that before.

21 Q. What did you do with the property after
22 you went to see what was there?

23 A. Which property?

24 Q. The property -- so I'm assuming that this
25 property was at PNM, correct?

1 A. One more time. I'm sorry.

2 Q. It was at PNM?

3 A. Correct.

4 Q. Okay. And when you went to view the
5 property -- and you did view the property, or at
6 least some of it?

7 A. Yes, ma'am.

8 Q. What did you do with it after you reviewed
9 it?

10 A. Left it where it was.

11 Q. And where exactly was it in PNM?

12 A. They have a storage room, for lack of a
13 better word.

14 Q. Okay. Is it near the STIU offices? Is it
15 associated with the STIU offices?

16 A. No. I believe it was in one of the
17 facilities.

18 Q. Okay.

19 A. I don't recall specifically.

20 Q. At that time, did you look through the
21 property belonging to Mario Rodriguez?

22 A. I don't recall if he had more than one
23 bag. I would guess that he did, but I don't know.

24 Q. Would it help you, and would it maybe
25 refresh your recollection if I showed you some of

1 the property, as to what was there and what you may
2 have reviewed?

3 A. Are you referring to the documents?

4 Q. Yes.

5 A. That, I did not review that day.

6 Q. Okay. Were you made aware of the
7 existence of those documents that day?

8 A. I discovered them, yes, ma'am.

9 Q. Okay. So you discovered those documents
10 in June of 2017?

11 A. Correct.

12 Q. Did you type up any kind of a report or
13 memorialize your review of that property on that
14 date?

15 A. No, ma'am, I did not.

16 Q. Did anyone else with you make any kind of
17 report regarding the property that you reviewed that
18 day?

19 A. Not to my knowledge.

20 Q. Not to your knowledge?

21 A. No.

22 Q. That's fine. And did you go through the
23 documents and look at them?

24 A. Those documents?

25 Q. Mario Rodriguez' documents?

1 A. Not that day, no.

2 Q. Okay. Did you ever go through Mario
3 Rodriguez' documents?

4 A. I would, again, ballpark maybe two days
5 later, a couple days later.

6 Q. Okay. So tell me about -- so you went,
7 you looked at them, and you saw that they were
8 there. You left, you came back, and that's when you
9 reviewed the documents. Is that fair?

10 A. No.

11 Q. Okay. When did you review the documents?

12 A. Again, several days later.

13 Q. Several days later. And why did you come
14 back to review the documents several days later?

15 A. I didn't come back to review them.

16 Q. Well, how did you review them?

17 A. I took them with me to the FBI office.

18 Q. Okay. So several -- okay. So when you
19 left PNM, you took the documents with you?

20 A. Yes, ma'am.

21 Q. And they were kept at the FBI office?

22 A. Correct.

23 Q. And that was in June of 2017, give or
24 take?

25 A. Approximately, yes, ma'am.

1 Q. And once you got the documents to the FBI
2 office, what did you do with them?

3 A. I put the bag, I'm assuming, on my desk or
4 near my desk to review at a later time.

5 Q. Okay. And did you review them at a later
6 time?

7 A. I started to say, several days later Task
8 Force Officer Cupit and I flipped through them
9 quickly.

10 Q. Okay.

11 A. Didn't catch anything of note that we were
12 potentially interested in at the time.

13 Q. When you say "potentially interested,"
14 what specifically were you looking for?

15 A. Honestly, ma'am, we were looking for --
16 well, at least I can't speak for Mr. Cupit, but I
17 was just mainly flipping through to look for legal
18 documents or discovery material.

19 Q. And what would you consider to be
20 discovery material?

21 A. Specifically, what I was looking mainly
22 and hoping to find that day was paperwork that would
23 indicate somebody else had cooperated with law
24 enforcement.

25 Q. Okay. Were you looking for other

1 materials that may be relevant in your investigation
2 into the Javier Molina homicide?

3 A. If the Javier Molina paperwork was there,
4 that would have been something that we'd be
5 interested in.

6 Q. Okay. And that's the only thing that you
7 were looking for?

8 A. Or other discovery material.

9 Q. Or other discovery material. Were you
10 aware that there was in fact discovery material in
11 that box?

12 A. No, ma'am. Was there?

13 Q. Yes. And maybe what I can do is show you
14 the documents that were in there, and maybe it will
15 refresh your memory, or maybe you'll remember
16 reviewing them, or maybe you won't.

17 But would it help for you to see what
18 we're referring to?

19 A. Sure.

20 Q. Okay.

21 MS. BHALLA: May I approach, Your Honor?

22 THE COURT: You may.

23 MS. BHALLA: Your Honor, I think for
24 purposes of everybody's convenience, it might be
25 easier for everybody if we marked these as exhibits

1 just for purposes of this hearing. Mr. Castellano
2 indicated he may want to use these, as well. So
3 does anybody have any objection to my doing that?

4 MR. CASTELLANO: I agree to that, Your
5 Honor.

6 THE COURT: Well, I don't mind marking
7 them, but it will just look like we were dealing
8 with the pretrial motions. Let's just start with
9 Defendants' Exhibit A.

10 MS. BHALLA: Okay.

11 THE COURT: Does that work for you?

12 MS. BHALLA: It makes me happy. I don't
13 like keeping track of the other numbers.

14 THE COURT: All right. So let's do this:
15 Defendants' Exhibit A -- and this will be -- I'm
16 going to call this, for lack of anything else, Brady
17 hearing exhibit.

18 MS. BHALLA: Okay. Thank you, Your Honor.

19 THE COURT: Ms. Bhalla.

20 BY MS. BHALLA:

21 Q. Did that refresh your recollection at all
22 as to whether or not you recall seeing those
23 documents in Mario Rodriguez' property?

24 A. To a degree.

25 Q. To a degree. Can you explain to us what

1 you mean by that?

2 A. You know, I didn't catch which one was
3 numbered what.

4 Q. Oh, I'm sorry.

5 MS. BHALLA: Just for the record, Your
6 Honor, I've identified Defendants' Exhibit A and
7 Defendants' Exhibit B. Let me take those back to
8 the witness so he can describe them. I apologize.

9 THE COURT: All right.

10 MR. CASTELLANO: Your Honor, since this is
11 a hearing for the Court, I don't object to using the
12 visualizer if Ms. Bhalla wants to do that in order
13 to avoid kind of going back and forth.

14 MS. BHALLA: Thank you.

15 MR. CASTELLANO: That will give the Court
16 a chance to look at the document, as well.

17 THE COURT: Okay.

18 MS. BHALLA: Thank you.

19 BY MS. BHALLA:

20 Q. This is what's been marked, Agent, as
21 Defendants' Exhibit A. Can you tell us what that
22 is, please?

23 A. That looks like notes of some sort. I
24 don't believe that that was in Mr. Rodriguez'
25 property. I think that somehow may have gotten

1 mixed in when I was hurriedly making copies for the
2 defense yesterday.

3 Q. Okay. So is it your testimony that this
4 was not in fact contained in Mario Rodriguez'
5 property?

6 A. I don't believe it was, ma'am.

7 Q. Okay. And would it surprise you to know
8 that it was represented to at least the defense
9 counsel that it was in fact contained in Mr.
10 Rodriguez' property?

11 A. Very much so.

12 Q. Would you agree with me that this is
13 discovery related to the Javier Molina homicide, or
14 that it contains information relating to the Javier
15 Molina homicide?

16 A. Not specifically, no, ma'am.

17 Q. Well, or that it contains information
18 related to the RICO investigation which involves
19 three separate cases?

20 A. I suppose in generalities, sure.

21 Q. Well --

22 A. It looks like shorthand notes to me,
23 ma'am.

24 Q. Right. And I think that those notes
25 detail -- correct me if I'm wrong -- but the number

1 of CHSS developed by the FBI within the SNM Gang;
2 correct?

3 A. Yes.

4 Q. Okay. The number of undercover drug and
5 firearm buys in the investigation of this overall
6 RICO VICAR case?

7 A. Yes.

8 Q. The number of wiretaps in this case? And
9 when I say "this case," I mean the overall federal
10 investigation into the SNM.

11 A. Sure.

12 Q. Okay. And how many hours of recordings of
13 the ELSUR device are in this case?

14 A. That is also on this document.

15 Q. Okay. And this document goes on to list
16 other information related to the FBI's investigation
17 of the SNM RICO case; correct?

18 A. I don't disagree.

19 Q. Okay. Thank you.

20 Moving on, I'm going to show you what's
21 been marked as Defendants' Exhibit B. Do you
22 recognize this document?

23 A. Vaguely. Again, the amount of paperwork
24 in this stack was voluminous.

25 Q. Okay. And that's okay. I'm not trying to

1 trick you. Do you know or do you recall whether or
2 not you found this document in Mario Rodriguez'
3 property?

4 And if you don't recall, that's fine.

5 A. It looks somewhat familiar, but I couldn't
6 say for sure.

7 Q. Okay, that's fine. Would you agree with
8 me that this document details the video surveillance
9 footage captured in the Javier Molina homicide?

10 A. Yes, ma'am.

11 Q. I'm going to now show you what I'm going
12 to mark as Defendants' Exhibit C, and ask you if you
13 recall seeing this document in Mr. Rodriguez'
14 property.

15 MS. BHALLA: Does the Government have an
16 objection to me just putting this up on the Elmo?

17 MR. CASTELLANO: I don't, Your Honor.

18 THE COURT: Okay. Thank you.

19 BY MS. BHALLA:

20 Q. Can you see that okay where you are?

21 A. Yes, ma'am.

22 Q. Do you recall seeing this letter or like
23 the outside of the letter in Mario Rodriguez'
24 property?

25 A. Yes, ma'am.

1 Q. Okay. And would you agree with me that's
2 a letter from Robin Martinez to Timothy Martinez?

3 A. Yes.

4 Q. And it's not addressed to Mario Rodriguez?

5 A. Correct.

6 Q. But it was in Mario Rodriguez' property?

7 A. Correct.

8 Q. Okay. Thank you. I'm going to take you
9 to one of the pages in this document. Do you recall
10 reading this letter contained in Mario Rodriguez'
11 property?

12 A. No, ma'am, I don't.

13 Q. Okay. Is this the first time that you've
14 read this letter?

15 A. I haven't read it yet.

16 Q. Okay. If you haven't read it, that's
17 fine. I think that's my question. Have you read
18 this letter before?

19 A. No, ma'am.

20 Q. How familiar are you with the Javier
21 Molina investigation?

22 A. Generally.

23 Q. Okay. I mean, did you attend a lot of the
24 debriefs? Did you have any information about like
25 what the FBI was looking for in the investigation?

1 How involved were you with this prosecution?

2 A. In general, a lot of specifics that have
3 come about in the last month or so I'm not involved
4 in.

5 Q. So is it fair to say that, you know, when
6 you were reviewing this box, you may not have
7 been -- let's put it this way: When you attended
8 your training, did you attend your training at
9 Quantico?

10 A. Yes, ma'am.

11 Q. Did they talk to you about what Brady
12 information is or what Giglio information is?

13 A. Yes.

14 Q. And what's your understanding of what that
15 is?

16 A. My understanding of Brady is, it's
17 exculpatory evidence that would be beneficial to the
18 defense.

19 Q. Okay.

20 A. Giglio would be impeachment material. And
21 correct me if I'm wrong, ma'am.

22 Q. No, no. I'm just trying to figure out
23 what your knowledge is. That's it. It's not a
24 quiz. Don't worry. You won't be graded. I just
25 want to know if that's your understanding?

1 A. Yes, ma'am.

2 Q. Okay. and --

3 MR. JEWKES: Your Honor, if we might have
4 the agent speak up just a little bit, please?

5 THE WITNESS: Get a little closer. Is
6 that better, sir?

7 MR. JEWKES: Yes.

8 BY MS. BHALLA:

9 Q. So just -- I don't want you to have to
10 read the whole letter. I don't want to waste
11 everybody's time. But can you just read the
12 highlighted portion to yourself, and I'm going to
13 ask you some questions about it.

14 A. Okay.

15 Q. Are you ready?

16 A. Okay.

17 Q. Are you aware that part of the allegations
18 or part of what happened in this case is that there
19 were several defendants charged in state court, and
20 that was Timothy Martinez, Jerry Montoya, and Jerry
21 Armenta? Are you aware of that at all?

22 A. Yes, ma'am.

23 Q. And are you aware that there was some
24 communication between Jerry Armenta and Jerry
25 Montoya about one of them taking the rap for the

1 murder in the state case?

2 A. That sounds vaguely familiar.

3 Q. So would you agree with me that if Mario
4 Rodriguez was in possession of letters from Timothy
5 Martinez and his wife discussing the fact that their
6 versions of the stories don't match up, that that
7 would be relevant and material to the defense in
8 this case?

9 A. Potentially, yes, ma'am.

10 Q. Potentially. Okay. Thank you. I'm going
11 to refer you to another page of this letter. We're
12 still in Defendants' Exhibit C. Can you take a
13 moment to just read that highlighted portion. You
14 don't have to read it out loud.

15 A. Okay.

16 Q. Do you know who Monster is?

17 A. I don't.

18 Q. If Monster were a code name for one of the
19 government witnesses in this case, do you think that
20 this might be material and relevant to the defense
21 of this case?

22 A. If Monster were a code name for a
23 government witness?

24 Q. Yes.

25 A. Potentially. I don't know who that is,

1 ma'am.

2 Q. Okay. Thank you.

3 A. So I'm clear, that letter was from Timothy
4 Martinez's wife?

5 Q. That letter, I'll represent to you --
6 would you like to see the envelope again?

7 A. That was all from that same --

8 Q. Yes, it's all from the same letter.

9 A. No, I don't need to.

10 Q. And you would agree with me that that
11 letter was not addressed to Mario Rodriguez?

12 A. If that was in that envelope, then, no,
13 ma'am.

14 Q. I'm going to show you what's been marked
15 as Defendants' Exhibit D for purposes of this
16 hearing. Does that also appear to be a letter from
17 Robin Martinez to Timothy Martinez?

18 A. Yes, ma'am.

19 Q. And did you see or review this letter in
20 the property box belonging to Mario Rodriguez?

21 A. I don't believe I had time to review the
22 letters. But I did see several envelopes addressed
23 to Timothy Martinez.

24 Q. And when you saw those envelopes addressed
25 to Timothy Martinez, those were not -- those letters

1 weren't meant for Mario Rodriguez? Do you know? I
2 mean, they weren't addressed to Mario Rodriguez,
3 were they?

4 A. No.

5 Q. But they were in Mario Rodriguez'
6 property?

7 A. Correct.

8 Q. I want to direct your attention to the
9 bottom highlighted paragraph in this letter. And
10 you know what? Do you mind just reading that out
11 loud where it starts "Yes"?

12 A. At the bottom?

13 Q. Yes.

14 A. "Yes, I will send this" -- I can't make
15 that out.

16 Q. I think it says "deal."

17 A. "Yes, I will send this deal on to B. Does
18 he know what really happened?"

19 Q. And do you know who B is?

20 A. I don't.

21 Q. If he were -- if B is referring to Mario
22 Rodriguez, do you think that this would be
23 beneficial and material for the defense to have
24 before the trial of this case?

25 A. If that's who they're referring to,

1 potentially, yes, ma'am. I don't know the context
2 of that letter.

3 Q. Okay. And would you agree with me that
4 it's difficult for us to try to ascertain the
5 context of this letter now, before trial in this
6 case?

7 A. I can't speak for you, ma'am.

8 Q. It's difficult for you to glean the
9 context of it, seeing it right now, isn't it?

10 A. Yes, ma'am.

11 Q. Okay. Thank you. I'm going to show you
12 one more letter that's been marked as Defendants'
13 Exhibit E. Is that another letter from Robin
14 Martinez to Timothy Martinez?

15 A. It appears that way.

16 Q. Okay. And was this another one of the
17 letters that you saw in the box or -- I'm sorry, I
18 keep calling it a box -- in the bag of Mario
19 Rodriguez' property?

20 A. I saw several, two or three.

21 Q. Two or three?

22 A. I believe so.

23 Q. Okay. I'm just going to ask you a couple
24 of questions about this letter.

25 MS. BHALLA: Your Honor, what I think I'll

1 do, this has already been marked as an exhibit. I
2 think we've gone over some of the materials in the
3 others. I think that's sufficient. I'll move on to
4 the next one, Your Honor.

5 Q. I'm going to show you what's been marked
6 as Defendants' Exhibit F. Okay, here we go. Can
7 you read that okay?

8 A. On the monitor, ma'am?

9 Q. Are you ready?

10 A. Yes.

11 Q. Sorry. Would you agree with me that
12 that's a letter from Mario Rodriguez to the county
13 clerk?

14 A. Yes, ma'am, it appears that way.

15 Q. And it's dated November 19th of 2014?

16 A. Correct.

17 Q. And this is a letter that was written
18 after the Javier Molina homicide?

19 A. Yes.

20 Q. Are you aware that the allegation in this
21 case is that Mario Rodriguez had paperwork passed to
22 him and that's part of why the Javier Molina murder
23 happened, at least according to the Government?

24 A. Yes, I'm familiar with that.

25 Q. And if in fact Mario Rodriguez was

1 requesting case materials on other murders, or case
2 materials on other cases, right, so he's -- would
3 you agree with me that he's writing to the clerk,
4 asking for information contained in the Court file?

5 A. Yes. It appears, yes.

6 Q. Okay. And you don't know, do you, what
7 the case he's requesting is about?

8 A. I don't.

9 Q. But that might be something we would want
10 to know, right?

11 A. Potentially, yes.

12 Q. Yeah. And that might be material and
13 relevant to the defense of this case if Mario
14 Rodriguez was requesting information on -- let's
15 just call this another homicide case?

16 A. If that's what it is. I don't know what
17 it is, ma'am. But I'll agree with you.

18 Q. Okay. And would it be even more important
19 if Mario Rodriguez was never a suspect or never
20 implicated in that murder, and he was trying to get
21 paperwork or case materials on someone other than
22 himself?

23 A. Say that one more time.

24 Q. If he were trying to get information about
25 a case that had nothing do with him, and it was

1 about somebody else or somebody else's case,
2 wouldn't that be even more important in the context
3 of the Javier Molina homicide?

4 A. Potentially, yes.

5 Q. Potentially. Let's look at the next one,
6 Defendants' Exhibit G. Can you just take a moment
7 the read that, please.

8 A. Okay.

9 Q. Would you agree with me that's another
10 letter from Mario Rodriguez to the county clerk?

11 A. Yes.

12 Q. And would you agree with me that it's
13 referencing the same case number as the previous
14 letter?

15 A. I would have to look at them next to each
16 other, but if you say --

17 Q. That's probably better for the record
18 anyway. Let's do that. Can you tell us when you
19 find the case number. I can help you look.

20 A. 905-CR-2007-724.

21 Q. And is that the same case number in
22 Defendants' Exhibit G?

23 A. 905-CR-2007-724. Yes, ma'am.

24 Q. And would you agree with me that this
25 letter to the clerk is dated December 20th of 2014?

1 A. Yes.

2 Q. And would you agree with me that this
3 letter occurred after the Javier Molina homicide?

4 A. Yes.

5 Q. And would you agree with me that in this
6 letter, Mario Rodriguez represents, at least to the
7 clerk, that the case materials in the discovery or
8 the case file in this particular CR number is
9 related to an appeal that is material or has
10 something to do with him?

11 A. I'll just read the sentence that you're
12 referring to.

13 Q. Sure.

14 A. It says, "I need these records for legal
15 reasons regarding a legal defense for a appeals
16 process."

17 Q. Okay. Now, if in fact this letter did not
18 have anything to do with an appeal for Mario
19 Rodriguez, would that be important to your
20 investigation?

21 A. Yes.

22 Q. And it's something you would want to know
23 more about?

24 A. Potentially.

25 Q. Don't you want to know pretty much

1 everything there is to know when you're
2 investigating a homicide?

3 A. Yes.

4 Q. So would you agree with me if Mario
5 Rodriguez were representing, at least to the Court,
6 that he was interested in paperwork that didn't have
7 anything to do with him, that that would be
8 something you guys would be interested in as FBI
9 agents?

10 A. If. Yes, ma'am.

11 Q. Yes. Okay. Thank you. I'm going to show
12 you what's been marked next as Defendants' Exhibit
13 H, and given that this is a lengthy document I may
14 approach just to go over this with you, if that's
15 all right.

16 Would you agree with me that this
17 Defendants' Exhibit H contains addresses and
18 identifying information for various lawyers and at
19 least one judge?

20 A. Yes, ma'am. This looks like the address
21 book that was in Mr. Rodriguez' property.

22 Q. So you were aware then that Mario
23 Rodriguez' property contained an address book with
24 people's personal information in it or personal
25 addresses?

1 A. Are you referring to this page
2 specifically, or in general?

3 Q. In general. But we can refer to this page
4 specifically, if that's easier.

5 A. I don't know if there is any home
6 addresses. Those look more like P.O. boxes and
7 mailing addresses. They look more like P.O. boxes,
8 mailing addresses, office addresses. I don't think
9 anything on there is a home address. But correct me
10 if I'm wrong. I believe that's the courthouse,
11 ma'am.

12 Q. Okay. And if we look through this to the
13 next page, would you agree with me that Jerry
14 Montoya and Jerry Armenta are listed in that address
15 book?

16 A. Their names are there, yes.

17 Q. Would you agree with me that it appears
18 that their date of the birth and their Social
19 Security numbers are listed on this address book?

20 A. I see Jerry Montoya's Social Security
21 number. Is Armenta's -- I can't make that out.

22 Q. Okay. Let's take it question by question.
23 Do you see Jerry Montoya's Social Security number on
24 this document?

25 A. I don't know that that's his, but there is

1 a Social Security number listed next to his name.

2 Q. And next to Jerry Armenta's name there is
3 a long number with several digits that could -- or
4 could it be a Social Security number?

5 A. Possibly.

6 Q. In this address book, it appears that
7 there is a legend that details four directions, four
8 seasons, four parts of the day, and four divisions
9 of life. Would you agree with me that that is
10 contained in this document?

11 A. Yes, ma'am.

12 Q. Are you aware that Mario Rodriguez
13 previously testified that he was given some sort of
14 map or plan from one of the defendants in this case
15 detailing divisions similar to the divisions
16 contained in this address book?

17 A. No, ma'am. I don't know what Mr.
18 Rodriguez testified to.

19 Q. Okay. If Mr. Rodriguez provided that
20 testimony, do you think that this information would
21 be something that the defendants would have used in
22 assessing his testimony?

23 A. I could agree with that -- could you
24 repeat the question. I'm sorry.

25 Q. Yes. I may have to get it read back to

1 me. Would you agree with me that if Mr. Rodriguez
2 testified about some sort of similar division of the
3 SNM, or division of responsibilities, as is
4 contained in this address book, that it would have
5 been relevant or material to the defendants' ability
6 to assess that testimony or to cross-examine him on
7 those statements?

8 A. Again, I don't know what Mr. Rodriguez
9 testified to. But potentially.

10 Q. Okay. I'm going to show you another page
11 in this address book, and it lists J. Ray Armenta.
12 Do you know who that is?

13 A. I don't.

14 Q. Okay. It also lists Montoya. Is that
15 correct?

16 A. The name "Montoya" is written there.

17 Q. And does it appear to have FBI numbers or
18 case numbers or some sort of other identifying
19 information in that address book?

20 A. They don't look like FBI numbers. Oh,
21 there is -- "FBI" is written there. I would agree
22 with you that they're some sort of identifying
23 numbers. I don't know what they are.

24 Q. I'm going to show you the next page. It
25 appears that Timothy Martinez's name is written

1 down. Does it contain what appears to be his Social
2 Security number?

3 A. There is a number next to it that looks
4 like a Social Security number, as well as a date of
5 birth. I don't know if that's his or not.

6 Q. Okay. I'm going to move on to Defendants'
7 Exhibit I. Are you aware whether or not Mr.
8 Rodriguez made threats to any of the other
9 government witnesses in this case when he was
10 attempting to get them to participate in the Javier
11 Molina murder?

12 A. I don't know.

13 Q. Okay. And you're going to have to follow
14 me a little bit on this. I know that you don't know
15 the answer, but I want to pose to you a
16 hypothetical.

17 If that testimony came out, that Mario
18 Rodriguez had frightened other people into
19 cooperating in the murder of Javier Molina, do you
20 think that his admission to making other threats or
21 to intimidating other inmates on previous occasions
22 would be relevant and material as part of the
23 investigation in this case?

24 A. Hypothetically, I suppose so.

25 Q. Okay. So I'm going to direct your

1 attention, then, to Defendants' Exhibit I. Does
2 this look like some of the pages and pages and pages
3 of materials that were found in Mario Rodriguez'
4 property bag?

5 A. It looks like it, yes.

6 Q. So that looks like some of the writing
7 that you reviewed?

8 A. Yeah.

9 Q. I'm not going to hold it against you if
10 you didn't read all of it. It was painful. But
11 does it at least look like some of it that you read?

12 A. It appears to be, ma'am.

13 Q. Can you please read the highlighted
14 sections?

15 A. Can you slide it up?

16 Q. Yes. Sorry.

17 A. Thank you. Would you like me to read it
18 out loud?

19 Q. Yes, please.

20 A. What's highlighted is, "Plus he was scared
21 of me. Even when I was asleep he was scared. One
22 day" --

23 Q. Oh, I skipped -- can you read the whole
24 thing? I'm sorry.

25 A. Where would you like me to start?

1 Q. Just keep going down.

2 A. "One day during count he told me he
3 couldn't sleep. Why is that? He told me it was
4 because of me. He went on to explain that I" --

5 Q. Okay. I think that's good enough for that
6 page. I'm going to go on to the next page and ask
7 you to read the bottom highlighted paragraph. Can
8 you see it okay?

9 A. Yes, ma'am. "I was written up for assault
10 and threats. I threatened to smash him first chance
11 I got. I fought as much as I could down the tier
12 steps and out the pod. I heard a homie yell out for
13 them to leave me alone."

14 Q. So do you think that the fact that Mario
15 Rodriguez admitted to framing another inmate and
16 that another inmate was afraid of him and that he
17 was written up for threats and assaults would be
18 relevant and material, given the hypothetical that I
19 posed to you in this case?

20 A. I don't know the context of those
21 writings, ma'am. When I was thumbing through them,
22 it looked like a lot of them were for a creative
23 writing class that he was taking. But I'll agree
24 with you that, yes.

25 Q. Okay. Did you happen to see letters

1 written from Gerald Archuleta to Mario Rodriguez
2 contained in Mario Rodriguez' property?

3 A. I didn't catch that.

4 Q. So you didn't review those letters?

5 A. No.

6 Q. If I represented to you that Gerald
7 Archuleta testified that he didn't -- he wasn't part
8 of the SNM -- let me ask you this way: Are you
9 aware that when he was released from custody, Gerald
10 Archuleta was relocated to Tennessee?

11 A. Yes.

12 Q. And were you aware that he denied having
13 any contact with SNM members when he was in
14 Tennessee?

15 A. I can't say to that. I'm not sure.

16 Q. And that's okay. I'll ask it to you this
17 way: If he testified that he had limited or that,
18 you know, he didn't really have contact with many
19 SNM members when he was in Tennessee, and he wrote
20 letters while he was in Tennessee to SNM members,
21 don't you think that that would tend to show that he
22 wasn't telling the truth about that?

23 A. Again, I don't know what his testimony
24 was, but I agree with your hypothetical.

25 Q. Okay. So if that was his testimony, it

1 would have been important for us to see the letters
2 proving that what he testified to wasn't true?

3 A. Yes.

4 Q. Okay. And I'm going to go ahead and mark
5 that letter as Defendants' Exhibit J, and I'll show
6 that to you, to the agent. Did you get a chance to
7 take a look at that letter?

8 A. Yes.

9 Q. You'd agree with me that it doesn't have
10 Gerald Archuleta's name on it, correct?

11 A. Correct.

12 Q. Okay.

13 A. And you did point to a 913 or 931?

14 Q. Yeah.

15 A. Okay.

16 Q. And, you know, I'll represent to you that
17 that's a Tennessee area code.

18 A. I'll take your word for it.

19 Q. You may not have known that, but knowing
20 that there is a phone number directed to an SNM
21 member that contains a Tennessee area code, do you
22 think it's logical, or at least practical, to assume
23 that there's a high probability that this letter
24 could have come from Gerald Archuleta?

25 A. Potentially, yes.

1 Q. Okay. Thank you. Did you get a chance --
2 did you notice that there were other inmates'
3 property contained in Mario Rodriguez' property?

4 A. Other than those three letters to Timothy
5 Martinez, no.

6 Q. And the letter from -- the letter from
7 somebody else that I just showed you, Defendants'
8 Exhibit J?

9 A. Oh, I'm sorry. Are you considering
10 letters not written by Mr. Rodriguez to not be his
11 property?

12 Q. No, not necessarily. I'm just asking
13 if -- that's a good point. You're right about that.
14 Did you get a chance to -- or did you ever notice
15 that there were commissary order forms from Mauricio
16 Varela in his property?

17 A. I don't believe I saw that.

18 Q. Okay. Would it refresh your recollection
19 if I showed that one to you?

20 A. Probably not.

21 Q. That's okay. I'm going to show you
22 anyway, just in case, and if it doesn't refresh your
23 recollection, that's fine. I'm going to show you
24 what's been marked as Defendants' Exhibit K. Do you
25 recall seeing Mauricio Varela's commissary form in

1 Mario Rodriguez' property?

2 A. Prior to you just showing it to me, no,
3 ma'am.

4 Q. Okay. Now that you've seen it, do you
5 recall seeing it at the time that you went through
6 Mario Rodriguez' property?

7 A. No, ma'am.

8 Q. Okay. That's fine.

9 MS. BHALLA: May I have a moment, Your
10 Honor?

11 THE COURT: You may.

12 BY MS. BHALLA:

13 Q. I just have a couple of follow-up
14 questions, but I think we're done with the exhibits.
15 I'll leave them up here. Agent Sainato, after you
16 reviewed the documents, did you do anything with
17 them after that?

18 A. Are you talking about when I initially had
19 them in summer of '17?

20 Q. Yeah, I -- and let me just do this: Let
21 me make sure I understand your testimony. So in the
22 summer of 2017, after you found the documents at PNM
23 or after you were alerted to their existence -- you
24 don't remember who alerted you to their existence?

25 A. I don't.

1 Q. Okay, that's fine. But in any event, it
2 caused you to go to PNM to take a look at the
3 documents or to see what was there?

4 A. I believe we were already at PNM, if I
5 remember correctly. And while we were there on an
6 non-related matter, we just went down to that room
7 to see what was there.

8 Q. Okay. But you went down to that room to
9 see what was there because someone alerted you to
10 the fact that there was property there?

11 A. That is what I remember.

12 Q. Okay. And after -- at some point you went
13 back and picked it up and took it to your office; is
14 that fair to say?

15 A. No, ma'am. We went through what was -- we
16 went through some of it there the day of.

17 Q. Okay.

18 A. The reason that I took this bag is because
19 it was the only thing that could potentially warrant
20 some more --

21 Q. Investigation?

22 A. I don't want say investigation, just a
23 closer look.

24 Q. Okay. So at least in June of 2017, when
25 you saw the documents, you thought: Okay, maybe

1 this is something we should look at?

2 A. I wanted to -- again, like I said before,
3 I wanted to just flip through to see if there was
4 any legal documents or discovery material.

5 Q. And that prompted you to take those
6 documents to your office?

7 A. So that I didn't have to stand in the
8 prison and do it, yes, ma'am.

9 Q. I totally get that. But you took them to
10 your office, is my question?

11 A. Yes.

12 Q. And when you were at your office, you at
13 least flipped through them to see if there was
14 anything relevant to the case?

15 A. Quickly, but yes, ma'am.

16 Q. Okay. And after you flipped through it
17 quickly, what did you do?

18 A. I went through it with Task Force Officer
19 Cupit, and we kind of didn't see anything offhand
20 that looked like discovery material or anything, so
21 I placed them in a box that I had at my desk to
22 return to PNM at some point.

23 Q. And did you ever return this to PNM?

24 A. No, ma'am. It got mixed in with another
25 box under my desk, and I subsequently forgot that it

1 was there.

2 Q. How did you discover the box after that,
3 and when did you discover the box after this?

4 A. Let's see. So I went to a three-week SWAT
5 training, for three weeks of February, and I got
6 back last week. And the box that -- this box in
7 question was inside of contained accessories and
8 parts to my ballistic vest.

9 Q. Okay.

10 A. And because I had the SWAT stuff recently
11 on my mind, I went through that box to see what I
12 had and if I needed anything, or just to kind of
13 gear check, gear maintenance inspection. That's
14 when I discovered that box containing the property
15 was still there.

16 Q. And I think you said that was last week?

17 A. That was on Friday of last week, so the --
18 I'd have to look at a calendar.

19 Q. Just this past Friday?

20 A. Yes, ma'am.

21 Q. And once you saw the box, did you go
22 through it again?

23 A. No, ma'am. I was going off memory. I
24 recalled it just being letters to friends and
25 family, and I want say creative writings from -- or

1 like class writings, essays.

2 Q. Okay.

3 A. And I didn't think that it would be
4 important or relevant. So I gave it to Officer
5 Cupit to take back.

6 Q. To PNM?

7 A. Correct.

8 Q. And then do you know what Officer Cupit
9 did with the box?

10 A. I was alerted on Sunday that he'd given it
11 to Agent Stemo to bring down to Las Cruces.

12 Q. And that's the last that you know of the
13 box or the bag?

14 A. No. When they alerted me on Sunday
15 evening, the 25th maybe -- I'm guessing on the
16 date -- I received a call Sunday evening from Agent
17 Stemo and Mr. Cupit with regards to that property.
18 And Agent Stemo informed me that she'd found a
19 document in there as she was going through it just
20 to make sure there was no contraband in it before
21 she gave it back. She alerted me that there was a
22 document with statements about the Molina homicide.

23 When I was alerted to that, I immediately
24 called the case agent, Mr. Acee, or Special Agent
25 Acee, and informed him what we had discovered. And

1 then I drove to the office and called AUSA Armijo to
2 alert her as to what we'd found, as well. I then
3 read -- or I had read the document that Agent Stemo
4 had found, and immediately wrote a report which I --
5 there was nobody there to approve on Sunday evening,
6 so I wrote it in an e-mail and sent it, along with a
7 scanned copy of that document, to Ms. Armijo, Mr.
8 Castellano, and Mr. Beck.

9 MS. BHALLA: Okay. I think that's all I
10 have right now, Your Honor. But I think a couple of
11 other people may have questions for the agent, if I
12 may pass the witness.

13 THE COURT: All right. Thank you, Ms.
14 Bhalla.

15 MS. BHALLA: Thank you, Your Honor.

16 THE COURT: Anyone else have direct
17 examination of Mr. Sainato.

18 Mr. Villa.

19 DIRECT EXAMINATION

20 BY MR. VILLA:

21 Q. Good afternoon, Agent Sainato.

22 A. Good afternoon.

23 Q. So when you received the documents at PNM
24 and took them to your office, I guess for
25 convenience sake to review them there, did you

1 prepare a 302 for that?

2 A. No, sir. I was waiting to see if I found
3 anything relevant before preparing a report.

4 Q. And when did you prepare a report
5 concerning the relevance of those documents?

6 A. Are you referring to the report I wrote on
7 Sunday?

8 Q. You tell me. I don't know when you wrote
9 your report. Did you write a report before Sunday?

10 A. No, sir.

11 Q. So you received the documents in the
12 summer from PNM, right?

13 A. Right.

14 Q. Took them to your office?

15 A. Right.

16 Q. Conducted a review?

17 A. If we can call it that. I flipped through
18 it.

19 Q. Flipped through them. And at the time,
20 Mario Rodriguez had not entered into an agreement to
21 cooperate with the Government yet, had he?

22 A. Correct. He was not cooperating.

23 Q. So potentially there was evidence in this
24 stack of documents that could be used against him.
25 You didn't know, did you?

1 A. No, sir.

2 Q. So, I mean, there might have been some
3 documents in there that potentially inculcate Mr.
4 Rodriguez in the two cases in which he was charged
5 by the federal government, right?

6 A. Correct.

7 Q. But you only flipped through them?

8 A. Correct.

9 Q. And you only wrote a report about the
10 contents of those documents on Sunday?

11 A. Correct.

12 Q. And didn't write any other reports
13 concerning the acquisition of this property?

14 A. Correct.

15 Q. Now, you testified, I think, at one point
16 when Ms. Bhalla was showing you some documents, that
17 some of the letters Mr. Rodriguez wrote, you didn't
18 have time to review those?

19 A. That's correct.

20 Q. Did you ask another agent to review them?

21 A. At one point, when we had it here in the
22 last couple of days, Agent Stemo went through some
23 of it with me.

24 Q. That was the only time you asked?

25 A. Yes.

1 Q. Did you inform anybody other than -- well,
2 let's back up. We know Officer Cupit knew, because
3 he helped you look at some of the documents in June,
4 right?

5 A. Correct.

6 Q. Who else knew you had them at that time?

7 A. I don't believe anybody. I'm not sure.

8 Q. When was the next time you informed
9 anybody that you had those documents?

10 A. I suppose Sunday, the 25th.

11 Q. But the documents remained under your desk
12 until this past weekend?

13 A. Yes, sir.

14 Q. From the time you took them?

15 A. Yes.

16 Q. That's your desk in the Albuquerque
17 office?

18 A. Yes, sir.

19 Q. Is that the desk that you work at pretty
20 much on a regular basis?

21 A. Yes, sir.

22 Q. And you've been working on the SNM
23 investigation for how long?

24 A. Approximately two-and-a-half years. Two
25 years, two-and-a-half years.

1 Q. You knew in June, when you got Mr.
2 Rodriguez' property, that he was charged in two
3 separate indictments; correct?

4 A. Yes, sir.

5 Q. And did you have any long vacation time
6 between June and this past weekend, that you weren't
7 at your desk?

8 A. No, sir.

9 Q. So you're pretty much at your desk every
10 day that you were there working in Albuquerque?

11 A. Yes, sir.

12 Q. You don't have any other desks, do you?

13 A. No, I don't.

14 Q. Was there anything obstructing your view
15 of this bag of material that was under your desk
16 that -- you know, you put your mountain bike under
17 there, or something, and you couldn't see it?

18 A. I believe I said earlier that it was in
19 another box that had that gear and other stuff in
20 it; had rifle bags, backpacks, just general SWAT
21 gear under there, as well. So it's not like it was
22 just sitting on my desk and I looked at it every
23 day. So it was kind of in a corner, and I'd
24 forgotten about it.

25 Q. It was on top of your desk or under your

1 desk?

2 A. Under.

3 Q. How big is your desk?

4 A. I don't know. It's an L-shaped desk,
5 regular cubicle sized.

6 Q. Not like a giant desk or oversized or
7 anything like that?

8 A. I see what you're getting at. No, sir,
9 it's not.

10 Q. Does the desk have sides so that you can't
11 see under it unless you're sitting behind it?

12 A. No, sir.

13 Q. So if you're standing at the side of the
14 desk, you can see under it?

15 A. Yes, sir.

16 Q. And if you're standing at the other side
17 of the desk, can you see under it?

18 A. We're splitting hairs. You can see under
19 it from most of the points of view in my cubicle,
20 yes.

21 Q. So is it like -- is it a 360 view? Can
22 you walk around the desk?

23 A. No. It's a cubicle.

24 Q. It's a cubicle.

25 A. Yes.

1 Q. So how many sides are there? Three sides?

2 A. Yes.

3 Q. Can you see under all three sides?

4 A. No. I have filing cabinets kind of on the
5 end caps.

6 Q. I assume you were made aware that Mario
7 Rodriguez cooperated with the Government October 24,
8 2017?

9 A. I don't know the exact date, but that
10 sounds accurate.

11 Q. Did you become aware of his cooperation
12 the day that he cooperated?

13 A. I'm not sure.

14 Q. How did you learn about his cooperation?

15 A. Through the other agents. I don't
16 remember specifically, but I was made aware of his
17 cooperation.

18 Q. Were you present for any of his debriefs
19 or interviews?

20 A. No, sir.

21 Q. When the 302s and other material from the
22 debriefs and interviews came out, did you read them?

23 A. No, I did not.

24 Q. Now, you mentioned, referring to Mr.
25 Rodriguez' writings, that they appeared to be

1 creative writings?

2 A. That was my recollection.

3 MR. VILLA: Your Honor, could I approach
4 and show him a couple of documents and ask if he's
5 seen them?

6 THE COURT: You may.

7 BY MR. VILLA:

8 Q. The first document has a Bates number on
9 it, does it not?

10 A. It does.

11 Q. And it's U.S. v. DeLeon et al., 52007
12 through 52022?

13 A. That is what you're showing me.

14 Q. And I'll let you look at it. Just for
15 reference, it's a document entitled, "The writings
16 of Mario Rodriguez"?

17 A. It is titled that.

18 Q. Can you take a look at that and let me
19 know if you've ever seen that before?

20 A. This doesn't look familiar at all, sir.
21 Most of what was in there was handwritten, and this
22 is typed.

23 Q. I'm not telling you that it did or didn't
24 come from that box. I'm just asking if you've ever
25 seen it before?

1 A. No, I have not seen this at all.

2 Q. Were you aware of Mario Rodriguez'
3 writings, outside of the letters we've been talking
4 about today?

5 A. No, sir.

6 Q. I'll show you the second one. This is
7 Bates Numbers 51999 through 52002, right?

8 A. Correct.

9 Q. And it's entitled, "An essay by Mario
10 Rodriguez, Inmate Level 6"?

11 A. It is.

12 Q. I'll let you look at that, if you'd like.
13 Agent Sainato, have you ever seen that document
14 before?

15 A. No, sir.

16 Q. And you would agree with me that Level 6,
17 you're aware through your investigation, is at PNM?

18 A. Correct.

19 Q. And that's where you went to obtain the
20 documents that you obtained from Mario Rodriguez?

21 A. That is where I got them, yes.

22 Q. And I'll represent to you that the two
23 documents I just showed up were produced by the
24 Government February 5th, 2018, about a week into
25 this trial. Are you aware that these documents were

1 being produced?

2 A. No, sir.

3 Q. And it's your testimony that the two
4 documents I just showed you were not in the
5 documents that were contained in this bag that sat
6 on your desk?

7 A. I don't believe they were. I don't know.

8 Q. You're not sure because you're not 100%
9 familiar with the 800, 900 pages that were in there,
10 correct?

11 A. That's correct.

12 Q. Let me show you one more.

13 MR. VILLA: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. VILLA:

16 Q. Well, I'll mark this, sir, as a
17 Defendants' Exhibit, but this looks like one of the
18 writings of Mario Rodriguez that you looked through?

19 A. It looks like it, yes, sir.

20 Q. Then I've highlighted here a statement
21 that says, "I just laughed at him. His cowardice
22 amused me back then. I thrived off being feared. I
23 enjoyed it. Even if he was a middle-aged sissy, all
24 that mattered was he feared me."

25 Did I read that right?

1 A. Yes, sir.

2 Q. Getting back to Ms. Bhalla's questioning
3 of you about the allegations in this case, it's your
4 testimony that you weren't aware that Mario
5 Rodriguez made a statement to Nancy Stemo that when
6 he took Mr. Perez' piece from Mr. Perez' walker to
7 make the shanks to kill Javier Molina that Mr. Perez
8 appeared scared and in fear?

9 A. Again, I don't know what Mr. Rodriguez
10 testified to.

11 Q. Well, I wasn't asking you about his
12 testimony. I'm asking you about the statement he
13 made to Nancy Stemo October 24, 2017.

14 A. I didn't read that report, sir.

15 Q. Did Nancy Stemo talk to you about the
16 report?

17 A. I don't recall.

18 Q. Agent Acee?

19 A. I don't recall that either.

20 Q. But you do know that they talked to you
21 about the fact that they had cooperated and
22 debriefed with the federal government?

23 A. Yes, I knew he was cooperating.

24 Q. Okay.

25 MR. VILLA: And, Your Honor, actually the

1 document I showed Agent Sainato, I won't mark and
2 admit. But I would like to mark as next Defendants'
3 Exhibit L and ask that it be admitted. I'll show it
4 to Mr. Castellano.

5 Your Honor, Mr. Castellano informs me that
6 he does not object.

7 THE COURT: Anyone else have any
8 objection? Not seeing or hearing any, Defendants'
9 Exhibit L will be admitted.

10 MR. VILLA: I'll show Ms. Duncan. I don't
11 think there is any objection, Your Honor.

12 THE COURT: Not hearing any objection,
13 Defendants' Exhibit L will be admitted into
14 evidence.

15 (Defendants' Exhibit L admitted.)

16 MR. CASTELLANO: May I have a moment, Your
17 Honor? There's some email addresses and things of
18 that nature. I'd just ask that it be redacted. It
19 doesn't have to be today, but before it becomes part
20 of the record, I would just seek redaction of those
21 materials.

22 THE COURT: Is that all right with you,
23 Mr. Villa?

24 MR. VILLA: Your Honor, there's no
25 objection. This is an email that was prepared

1 purportedly by Agent Sainato, to Ms. Armijo, Mr.
2 Castellano, and Mr. Beck, describing the situation
3 with the box, and it's a forwarded to -- or an email
4 sent to Ms. Fox-Young, via a forward, as well as a
5 lot of others. So there are a lot of emails on
6 there that we can have redacted before it's provided
7 to the Court to be admitted, if that's okay.

8 THE COURT: Okay. That's fine.

9 MR. VILLA: And may I approach one more
10 time?

11 THE COURT: You may.

12 BY MR. VILLA:

13 Q. Agent Sainato, I'm showing you Defendants'
14 Exhibit L. It's been admitted. Take a look at that
15 on the second page. Is that an email that you wrote
16 to all three United States Attorneys?

17 A. Yes, ma'am -- or sir. Sorry.

18 Q. And you wrote it on February 25, 2018?

19 A. Correct.

20 Q. And this concerns what you've been
21 testifying about with the box?

22 A. Correct.

23 Q. The last thing I want to show you, since
24 I'm up here, you talked with Ms. Bhalla about some
25 of the information Mr. Rodriguez had, including

1 other people's personal information, right?

2 A. We spoke about that, yes.

3 Q. Okay. So I'm showing you a page from this
4 box, I guess, or the bag. Does this appear to have
5 Mr. Perez' name, Social Security number, date of
6 birth, some other number, and home address?

7 A. Again, I don't know Mr. Perez' identifiers
8 or address offhand. But I agree with you that that
9 appears to be that way.

10 Q. It looks like a Social Security number?

11 A. Correct.

12 Q. It looks like a date of birth?

13 A. Yes.

14 Q. And it looks like a home address in
15 Carlsbad?

16 A. It's an address, yes, sir.

17 MR. CASTELLANO: Your Honor, before we
18 proceed, my understanding from Ms. Fox-Young is that
19 that document was also filed as Docket 1844. I
20 would just seek either sealing of that document or
21 redactions to that document, as well.

22 THE COURT: How do you want to proceed?
23 Do you want to do it as redactions or seal it?

24 MR. VILLA: Sealing seems like the easiest
25 way to do it.

1 THE COURT: All right.

2 MR. VILLA: Just the exhibit.

3 THE COURT: Without any objections,
4 Document 1844 will be sealed.

5 MS. FOX-YOUNG: Your Honor, perhaps just
6 1844-1, the exhibit to Document 1844.

7 THE COURT: What do you want, Mr.
8 Castellano? Do you want the whole thing sealed, or
9 just Document 1?

10 MR. CASTELLANO: I don't know what the
11 rest of that document is, Your Honor.

12 THE COURT: What's the rest of it, Ms.
13 Fox-Young?

14 MS. FOX-YOUNG: It's the motion to
15 dismiss, Your Honor.

16 THE COURT: This is a document that Mr.
17 Perez just filed within the last few minutes, I
18 guess. Do you want to take a look at it, Mr.
19 Castellano?

20 MR. CASTELLANO: Please, Your Honor.

21 THE COURT: All right. I'll hand it back
22 to Ms. Standridge. She can show it to you. That's
23 my copy, so if you'll give it back to me when you
24 have a chance.

25 MR. VILLA: I don't know if we want to

1 just seal this exhibit in lieu of redacting it.

2 We'd be happy to redact. It's the same thing, the
3 same document.

4 THE COURT: I think we've already decided
5 to redact your document. Now we're deciding what to
6 do with this one, whether we're going to seal this
7 one or just seal the attachment to it.

8 MR. CASTELLANO: Your Honor, I'm fine with
9 just sealing the attachment, which is 1844-1.

10 THE COURT: Any objection to that?

11 MS. FOX-YOUNG: No, Your Honor.

12 THE COURT: 1844-1 will be sealed, but the
13 motion itself will not be sealed.

14 MS. BHALLA: Your Honor, for the record,
15 the defendants' exhibits that we discussed for
16 purposes of this hearing should probably also be
17 sealed, and I would request that from the Court. I
18 don't think anybody would have objection to that.

19 THE COURT: Do we want all those exhibits
20 sealed? I mean, they're not filed anywhere. I
21 don't know how you seal something in a hearing like
22 this.

23 MS. BHALLA: I guess my only concern, Your
24 Honor, is that some of those appear to be Social
25 Security numbers. I just want to make sure that we

1 do something to protect that information, however
2 the Court --

3 THE COURT: Well, I think what Mr. Villa
4 and Mr. Castellano and the rest of the lawyers are
5 doing is, they're redacting the documents and then
6 submitting to the Court redacted copies. Do you
7 want to proceed that way?

8 MS. BHALLA: Yes, Your Honor, that sounds
9 good. Thank you.

10 THE COURT: All right. We'll do it that
11 way, then.

12 MR. VILLA: Since they've already been
13 admitted, perhaps we can sit down with the
14 Government, agree on the redactions, and then get
15 them back to the Court, if that's okay.

16 THE COURT: Well, Ms. Bhalla didn't move
17 the admission of any exhibits -- no? None.

18 So all we have is yours in evidence, Mr.
19 Villa.

20 MR. VILLA: Well, then I guess we could
21 redact them and then move them at a point when
22 they're redacted.

23 THE COURT: Okay.

24 MR. VILLA: If that's what Ms. Bhalla
25 wants to do.

1 MS. BHALLA: That sounds good. Thank you.

2 MR. VILLA: Your Honor, the last thing I'd
3 like to do, we've been able to in the last few hours
4 have the entire set of documents that were obtained
5 from the Government in this box scanned in. They're
6 all onto a flash drive. I don't want to admit 900
7 paper documents.

8 I have a flash drive that I would like to
9 identify, I guess, as Exhibit M, and move to admit.
10 And I'm happy to give the Government a chance to
11 review it.

12 THE COURT: All right. Are you moving
13 that admission at this time?

14 MR. VILLA: Yes, I am.

15 THE COURT: Any objection, Mr. Castellano?

16 MR. CASTELLANO: No, Your Honor. We would
17 just ask for a copy of the flash drive, please.

18 THE COURT: All right. So what's the
19 exhibit number? Is it M?

20 MR. VILLA: It's Exhibit M as in Mary.

21 THE COURT: Anybody else have any
22 objection? Not hearing any, Defendants' Exhibit M
23 will be admitted into evidence.

24 (Defendants' Exhibit M admitted.)

25 MR. VILLA: And we will provide a copy of

1 that flash drive to the United States.

2 And I'll pass the witness, Your Honor.

3 THE COURT: All right. Thank you, Mr.

4 Villa.

5 Anyone else? Ms. Duncan?

6 MS. DUNCAN: Thank you.

7 DIRECT EXAMINATION

8 BY MS. DUNCAN:

9 Q. Good afternoon, Agent Sainato.

10 A. Good afternoon, ma'am.

11 Q. I just wanted to follow up a little bit
12 about the search that you conducted in June of 2017.

13 With respect to Mr. Rodriguez' property, I think
14 that you testified that the bag was in a box.

15 A. First of all, I wouldn't call it a search.
16 It was in a clear plastic bag.

17 Q. Did you take all the documents that were
18 in the clear plastic bag?

19 A. Yes.

20 Q. Did you search or look at anyone else's
21 property on that day?

22 A. A couple others. Who specifically -- I'm
23 sure that's next -- I don't know.

24 Q. It is. Do you recall if it was property
25 belonging to government witnesses in this case?

1 A. Again, I don't recall at all. I think I
2 said before it was mostly personal effects, hygiene,
3 clothes, shoes, books, stuff of that nature.

4 Q. And I think that you said that you did not
5 write a report of what property or documents you
6 looked at that day; is that right?

7 A. That's correct.

8 Q. Do you know if TFO Cupit did?

9 A. I don't know.

10 Q. Did you receive any kind of a receipt when
11 you took Mario Rodriguez' property?

12 A. I did not.

13 Q. So am I correct in understanding that
14 there is no documentation that exists of you looking
15 at that property in June 2017, or taking it back to
16 FBI headquarters?

17 A. No, I don't believe so.

18 Q. We were looking at some letters from --
19 where are the defense exhibits? Here we go. Thank
20 you. I just wanted to look at these Timothy
21 Martinez letters.

22 I'm looking at Defendants' Exhibit C, and
23 I just wanted to note for the record the dates on
24 these documents. So for Defendants' Exhibit C, is
25 it correct that this letter is dated October 23,

1 2015?

2 A. Correct.

3 Q. And that was about a month or a little bit
4 more than a month before the first set of
5 indictments were issued in this case; correct?

6 A. I don't recall offhand, but I'll take your
7 word for it.

8 Q. Do you recall that the first indictments
9 came in December of 2015?

10 A. The first ones, yes.

11 Q. In that first indictment, several of the
12 defendants were charged with the murder of Javier
13 Molina; correct?

14 A. I believe so.

15 Q. As was Mr. Rodriguez?

16 A. Yes.

17 Q. And then if we could look at Defendants'
18 Exhibit D. And this is a letter from Timothy
19 Martinez' wife to Timothy Martinez, correct? Or
20 from Robin Martinez to Timothy Martinez?

21 A. If it was in that envelope --

22 Q. Yes.

23 A. Yes, I believe so.

24 Q. And the date on that letter, Defendants'
25 Exhibit D, is October 22, 2015; correct?

1 A. Correct.

2 Q. The last one would be Defendants' Exhibit
3 E. And the date on that letter is October 23, 2015;
4 correct?

5 A. Yes.

6 Q. And do you know if the state case was
7 still pending at the time these letters were
8 written?

9 A. I don't know.

10 Q. I know you said you don't think there are
11 any documents related to your looking at that
12 property on June 2017. Do you know if there are any
13 documents relating to just you visiting PNM on that
14 day?

15 A. I don't know.

16 Q. Any receipts or reports or anything like
17 that?

18 A. Again, I don't recall.

19 Q. And I think you probably testified to
20 this, and I just missed it, but when you were
21 searching or looking at this property, that was at
22 PNM Level 6; correct?

23 A. I'm not sure which facility it was. It
24 was at PNM.

25 Q. And you said that I think it was a

1 property room?

2 A. For lack of a better word, yeah.

3 MS. DUNCAN: Could I have a moment, Your
4 Honor?

5 THE COURT: You may.

6 MS. DUNCAN: No further questions, Your
7 Honor.

8 THE COURT: Thank you, Ms. Duncan.

9 Ms. Jacks, do you have direct examination
10 of Mr. Sainato?

11 MS. JACKS: I do, thank you.

12 THE COURT: Ms. Jacks.

13 DIRECT EXAMINATION

14 BY MS. JACKS:

15 Q. So, Agent Sainato, I'm going to start
16 asking you questions about this Mario Rodriguez
17 property. We're going to start there. Okay? First
18 of all, let me just ask you about -- let me make
19 sure I'm clear about the property. You don't know
20 whether you went to PNM North or South on this day
21 that you viewed the property in June of 2017?

22 A. No.

23 Q. But it was one of those facilities?

24 A. I was at PNM.

25 Q. Well, I mean, were you at -- but you don't

1 know which facility at PNM you were at?

2 A. I don't recall, ma'am.

3 Q. And as you're driving down the road, when
4 you come to the fork in the road, did you go right
5 or did you go left?

6 A. Again, ma'am, I don't recall.

7 Q. When you went into the facility, did you
8 have to present some sort of credentials and sign in
9 that you were entering the facility?

10 A. Again, I don't recall.

11 Q. So you might have just badged your way in?

12 A. Again, I don't recall.

13 Q. When you went, did you go specifically for
14 the purpose of looking at property of individuals
15 that had been there?

16 A. I don't believe so. I think I was there
17 on an unrelated matter. But, again, I don't recall
18 specifically.

19 Q. How did you know that you needed to go to
20 the property room and look at something?

21 A. I believe I testified previously that we
22 were made aware by one of the other STIU officers.

23 Q. So you might have just bumped into
24 somebody in the hallway and they said, "Oh, hey,
25 we've got some property you might want to look at"?

1 A. I don't recall the specifics, ma'am, but I
2 would speculate that we were in the STIU office.

3 Q. Well, if you prepared a report about your
4 official conduct on that day, you might have
5 something to refresh your memory, right?

6 A. I suppose so, ma'am.

7 Q. But you don't have anything that you can
8 refresh your memory with?

9 A. I do not.

10 Q. Do you keep a daily log of your activity
11 as an FBI officer?

12 A. No, ma'am.

13 Q. With respect to -- you looked at property
14 from more than one individual; is that right?

15 A. I believe so, yes.

16 Q. And did you seize property from more than
17 one individual?

18 A. No, ma'am.

19 Q. So the only property you actually left
20 whatever institution you were in with was this bag
21 of property that supposedly belonged to Mario
22 Rodriguez?

23 A. Correct.

24 Q. And with respect to the other people's
25 property that you looked at, do you know whether it

1 was property that belonged to Government cooperating
2 witnesses or to defendants in the case?

3 A. I don't know, ma'am.

4 Q. Now, I guess I want to understand what is
5 it that you think your duties to conduct a
6 Brady-Giglio review encompass?

7 A. Could you rephrase?

8 Q. What is a Brady-Giglio review?

9 A. That's a pretty general question. I just
10 want to answer it specifically to what you're asking
11 me.

12 Q. Do you agree that as an FBI agent, you
13 have a duty to preserve and document evidence that
14 could be favorable to a criminal defendant?

15 A. Yes, ma'am.

16 Q. And what do you call that?

17 A. A Brady-Giglio review.

18 Q. Is there any difference, in your mind, in
19 looking at property that belongs to a defendant
20 versus looking at property that belongs to a
21 government witness?

22 A. Potentially.

23 Q. Right. Because a defendant, you might
24 just be looking for evidence against him, right?

25 A. That's correct.

1 Q. But if you're looking at property of a
2 government witness, you have a special duty to look
3 for evidence that might be actually favorable to a
4 criminal defendant?

5 A. That's correct.

6 Q. Now, how many times, if at all, were you
7 asked by prosecutors in this case to conduct a Brady
8 or Giglio review of evidence that you had seized?

9 A. I don't know specifically.

10 Q. Were you ever asked?

11 A. Yes.

12 Q. When?

13 A. I don't recall.

14 Q. How many times?

15 A. I don't recall.

16 Q. Well, is it more than one?

17 A. I don't know.

18 Q. Well, do you document that anywhere?

19 A. When the prosecutors ask us to do --

20 Q. A Brady-Giglio review?

21 A. I don't believe so.

22 THE COURT: Ms. Jacks, I need to give Ms.
23 Bean a break.

24 MS. JACKS: That's fine.

25 THE COURT: We'll take it now. We'll be

1 in recess for about 15 minutes.

2 (The Court stood in recess.)

3 THE COURT: Mr. Sainato, I'll remind you
4 that you're still under oath.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Ms. Jacks, if you wish to
7 continue your direct examination of Mr. Sainato, you
8 may do so.

9 MS. JACKS: Thank you, Your Honor.

10 BY MS. JACKS:

11 Q. Agent Sainato, when you took the property
12 that you were told belonged to Mario Rodriguez, did
13 you get any sort of receipt or sign any sort of
14 receipt for the prison?

15 A. I don't recall.

16 Q. So you might have just taken the bag and
17 thrown it in the trunk of your car and not
18 acknowledged receipt of anything to anybody?

19 A. I suppose.

20 Q. When you took the bag sometime in June of
21 2017, that was supposedly the property of Mario
22 Rodriguez, did you tell anybody else?

23 A. Obviously, Task Force Officer Cupit was
24 aware.

25 Q. He was there when you did it, right?

1 A. Correct.

2 Q. And was he actually working at the prison
3 at that time?

4 A. No. He was a task force officer with us.

5 Q. He went to the prison with you?

6 A. Correct.

7 Q. Did he sign any sort of receipt?

8 A. I don't know.

9 Q. So you drove up from Albuquerque to PNM
10 together?

11 A. I believe so.

12 Q. So once you got the property, you drove
13 back to your office in Albuquerque?

14 A. That would be logical.

15 Q. Do you remember what you did?

16 A. I don't remember. This was kind of a
17 nonevent.

18 Q. Well, it may be a nonevent to the FBI, but
19 when you -- well, did you take the materials to your
20 office the same day that you went to PNM or a
21 different day?

22 A. I believe it was the same day. I don't
23 recall specifically.

24 Q. Well, you said that at some point you
25 looked through it, right?

1 A. Yes, ma'am.

2 Q. I don't know. You looked through it,
3 flipped through it. You characterize it both ways,
4 right?

5 A. I don't know, specifically. But I flipped
6 through it, yes, ma'am.

7 Q. Where did that search take place?

8 A. I believe we looked through it at the FBI
9 office.

10 Q. So at your cubicle at the FBI office in
11 Albuquerque?

12 A. I believe so, yes, ma'am.

13 Q. And you say "we." Who else looked through
14 it with you?

15 A. Officer Cupit and I.

16 Q. And what was it that you were looking for?

17 A. Like I said previously, specifically, I
18 can't speak for Mr. Cupit, but I was looking for
19 discovery material.

20 Q. You mean like materials that have been
21 distributed by the Government in discovery that
22 perhaps were in the possession of Mr. Rodriguez
23 improperly?

24 A. Correct.

25 Q. So you were looking for like Bates stamped

1 materials?

2 A. What the inmates would refer to as
3 paperwork, but yes, ma'am.

4 Q. But specifically the paperwork in this
5 case?

6 A. Or for others.

7 Q. When -- at any point after you took the
8 property did you make some sort of notation in
9 either a chain of custody document or a property log
10 or a report of any type that you had seized property
11 in connection with this investigation?

12 A. The intention wasn't to seize it, ma'am.
13 It was just to go through it in the office rather
14 than standing in the prison. I intended to take it
15 back to PNM. I just forgot to.

16 Q. So the answer to my question is: No, you
17 never completed any sort of document that you had --
18 that you were in possession or had seized materials
19 related to this investigation?

20 A. No.

21 Q. Nothing?

22 A. Knowing what I know now, I wish I had, but
23 no, ma'am.

24 Q. And you said that the documents -- well,
25 did you ever, between the time that you and Task

1 Force Officer Cupit looked through the documents and
2 the time that you looked through them again last
3 Sunday, had you looked at them at all?

4 A. No, ma'am.

5 Q. Nothing in between?

6 A. Correct.

7 Q. So when you found out that -- I think you
8 said you did find out sometime after October 24,
9 2017, that Mario Rodriguez was now a government
10 cooperator?

11 A. Correct.

12 Q. And so at no time after you found out
13 Mario Rodriguez was now a government witness did you
14 ever perform a Brady-Giglio analysis of those
15 documents?

16 A. Like I said previously, I forgot that I
17 was in possession of them, so no.

18 Q. So you never looked through them after
19 October 24, 2017, until Sunday?

20 A. Correct.

21 Q. Did the prosecutors in this case -- after
22 Mario Rodriguez became a government witness, did any
23 of the prosecutors in this case ever contact you and
24 ask you if you were in possession of any materials
25 regarding Mr. Rodriguez, and ask you to subject them

1 to a Brady-Giglio review?

2 A. I don't think personally. But we were
3 asked, as agents, to do that.

4 Q. So you were asked, and you just didn't do
5 it?

6 A. Well, again, remember, I didn't know that
7 I had it. I'd forgotten that it was under my desk.

8 Q. And what was it that you say made you
9 discover these documents under your desk, or under
10 part of your cubicle last Sunday?

11 A. I didn't find it last Sunday. I
12 discovered it on Friday.

13 Q. And what was it that made you discover it
14 last Friday?

15 A. Like I said previously, I had gotten back
16 that week from a SWAT training. And that box was
17 inside of another box that contained gear for my
18 ballistic vest. And having that training on my
19 mind, I looked to see what I still had in that box,
20 gear-wise, and that's when I discovered the box that
21 I had put Mr. Rodriguez' property into.

22 Q. So I want to ask you some questions about
23 some of the documents that Ms. Bhalla introduced.
24 And I want to start with Defendants' Exhibit B. And
25 can you read -- I just put it up on the Elmo. Can

1 you read that?

2 A. Yes.

3 Q. Or do I need to enlarge it?

4 A. No, I think I can see it.

5 Q. And would you agree with me that that
6 looks like notes regarding the video from the Molina
7 homicide?

8 A. That is what it appears, yes.

9 Q. And it relates various activities of
10 various people to what's going on, on the video, at
11 particular times, right?

12 A. I don't know specifically what it is,
13 ma'am, but it looks like a recount of the video.

14 Q. It looks like what?

15 A. A recount of the video.

16 Q. Okay. Are you aware that Mr. Rodriguez
17 testified in this trial that he had not -- he'd only
18 reviewed the video three times?

19 A. No, ma'am, I don't know what Mr. Rodriguez
20 testified.

21 Q. Are you aware that he testified in this
22 trial that certain things happened at particular
23 times on the video?

24 A. Again, I don't know what he said in his
25 testimony.

1 Q. Do you think that the fact he was in
2 possession of a document specifying particular times
3 and particular things that happened might be
4 relevant to determine where his testimony
5 originated?

6 A. I see what you're getting at. But, again,
7 he wouldn't have had this past early summer of 2017.
8 But I'll agree with you that, yes, it would.

9 Q. I mean, it could have -- if he'd read it
10 and taken notes on it or memorized it, he certainly
11 could have been quoting times based on what's in
12 this document, wouldn't you agree?

13 A. If he memorized it, perhaps.

14 Q. Or took notes off it that you don't have?

15 A. I suppose.

16 Q. Okay. So you would agree that this
17 document might be relevant in confronting Mr.
18 Rodriguez about some of his testimony, if he
19 testified about particular things happening at a
20 particular time in the video?

21 A. Hypothetically, I'll agree with you, yes,
22 ma'am.

23 Q. I'm going to ask you about the letters,
24 and I think they've been marked as Defendants'
25 Exhibits C, D, and E. I'm just going to show you

1 the first page of Defendants' Exhibit C. And this
2 is the envelope that the letter came in. And do you
3 see who the letter is from?

4 A. Yes.

5 Q. And who is that?

6 A. Looks like Robin Martinez.

7 Q. And do you know that Robin Martinez is
8 also known as Robin Lovelace, L-O-V-E-L-A-C-E?

9 A. No, ma'am.

10 Q. Were you investigating a Robin Lovelace?

11 A. Not to my knowledge.

12 Q. Did you investigate a Robin Lovelace in
13 regards to dealing drugs or setting up drug deals
14 for government witness Eric Duran?

15 A. I don't recall that. I don't know.

16 Q. Did you -- have you read these letters
17 that are allegedly from Robin Martinez or Robin
18 Lovelace to Timothy Martinez?

19 A. Not other than what was highlighted in
20 defense's exhibits.

21 Q. Would you agree that some of the letters
22 contain information that appear to be trying to pass
23 information between various individuals involved in
24 the Molina homicide?

25 A. I don't know, ma'am. I haven't read them

1 in their entirety.

2 Q. Okay. Do you know why Mario Rodriguez was
3 in possession of letters that were addressed to
4 Timothy Martinez?

5 A. No.

6 Q. Do you think the fact that a government
7 witness is in possession of materials from
8 essentially a co-defendant in his own -- in his
9 homicide case might be relevant to that individual's
10 credibility?

11 A. Potentially.

12 Q. Would you agree with me that if defendants
13 get together to get their stories straight, that
14 that certainly is something that could affect the
15 jury's evaluation of whether they're telling the
16 truth?

17 A. I suppose so.

18 Q. Did you ever tell any of the prosecutors
19 here that you were in possession of letters from
20 Robin Martinez, also known as Robin Lovelace?

21 A. I don't know that she goes by that name.
22 But to answer your question, no, I didn't know I was
23 in possession of them.

24 Q. I want to ask you about Defendants'
25 Exhibits F and G. And let's start with F. These

1 are some letters that were found, that appear to be
2 addressed to a county clerk by Mario Rodriguez, do
3 you agree with me?

4 A. Yes.

5 Q. And in this letter, pretrial hearing
6 Exhibit F -- actually, it looks like G comes
7 before -- let me show you G. Okay. This is another
8 letter to the county clerk that appears to be from
9 Mario Rodriguez?

10 A. If that's a question, yes.

11 Q. Okay. Let me just zoom in. Do you see
12 this line right here where Mr. Rodriguez writes, "I
13 need these records for legal reasons regarding a
14 legal defense for an appeals process"?

15 A. Yes, ma'am. These are the ones that Ms.
16 Bhalla highlighted earlier.

17 Q. Are you aware that -- do you know whether
18 the records he was requesting actually involved a
19 crime that he had committed or had been accused of?

20 A. I don't know.

21 Q. And if Mr. Rodriguez falsely represented
22 that his request for records was due to a legal
23 proceeding of his own, that that might be relevant
24 in assessing his credibility?

25 A. I suppose so.

1 Q. I mean, if he's lying to a court clerk and
2 a Court, saying, "I need these records for my own
3 appeal," and they have nothing to do with him, don't
4 you think that might show that he's engaged in some
5 sort of other nefarious purpose by requesting these
6 records?

7 A. On December 20, 2014, yes, ma'am, I agree
8 with you.

9 Q. Do you know why Mr. Rodriguez might be in
10 possession of names, addresses, Social Security
11 numbers, other personal information for various
12 co-defendants in his cases?

13 A. No.

14 Q. Do you know why he might be in possession
15 of telephone numbers for individuals associated with
16 those co-defendants?

17 A. No.

18 Q. Do you think one reason he might have that
19 information is so that he could continue to speak
20 and have contact with his co-defendants so that he
21 can get his story straight?

22 A. Well, that's pure speculation. It could
23 also be that they're members of the same gang, that
24 they're friends. It could be any reason, so I can't
25 agree with you on that one.

1 Q. You're saying pure speculation. You're an
2 investigator, right?

3 A. Yes, ma'am.

4 Q. You had these documents in your possession
5 for seven months, didn't you?

6 A. Yes.

7 Q. And Mario Rodriguez is your witness, isn't
8 he?

9 A. As the Government, yes.

10 Q. And how many attempts did you make to
11 question Mr. Rodriguez about the contents of this
12 property that you seized in June 2017?

13 A. Well, again, I'd forgotten that I had it,
14 so none.

15 Q. And I'm not sure. I think I asked you who
16 you told or who else knew about this, and you
17 mentioned Mr. Cupit; is that right?

18 A. That's right.

19 Q. Did you ever tell Agent Acee or Agent
20 Stemo, who were working with you on the case, that
21 you had seized property from Mario Rodriguez?

22 A. I don't recall.

23 Q. Did you ever tell any of the prosecutors
24 in this case who you were working with that you had
25 seized property belonging to Mario Rodriguez?

1 A. Again, I wouldn't use the word "seized."
2 But I don't believe they knew that I had that.

3 Q. How would you like me to ask about it?
4 That you took property from PNM that belonged to
5 Mario Rodriguez and left it under your desk for
6 seven months?

7 A. "Seized," to me, implies like a legal
8 authority needed. But we can go with "took from PNM
9 and left under my desk."

10 Q. Well, why did you take the materials from
11 PNM?

12 A. So that I could review it in my cubicle,
13 rather than standing in a prison facility.

14 Q. And to determine if, in fact, you could
15 use it as evidence in this case, right?

16 A. Again, I was thumbing through it to look
17 for legal paperwork, discovery material.

18 Q. To see if you could use that as evidence
19 in this case; correct?

20 A. Yes.

21 Q. Now, you testified earlier that some of
22 the materials in this bag appeared to be creative
23 writing from Mr. Rodriguez. Do you recall that
24 testimony?

25 A. Yes, that's what it appeared to be.

1 Q. And I think Mr. Villa showed you some
2 examples of creative writing of Mr. Rodriguez that
3 appear to have been typed?

4 A. I don't believe that came from the bag.

5 Q. Well, I know that's your testimony. I
6 want to ask you a few questions about that.

7 A. Okay.

8 Q. Do you know where those came from?

9 A. Looked like it came from the discovery in
10 this case.

11 Q. Because it's Bates stamped?

12 A. Yes.

13 Q. But do you know where it came from before
14 the Government Bates stamped it?

15 A. No, ma'am.

16 Q. And so you're just using the fact that
17 it's Bates stamped meaning that it's the discovery
18 in this case?

19 A. I was going off the fact that Mr. Villa
20 kind of alluded to that. But I guess to answer your
21 question, yes.

22 Q. Well, is it possible that those documents
23 came from the bag that was under your desk?

24 A. I would say that's highly improbable.

25 Q. Who else had access to that bag under your

1 desk?

2 A. I don't believe anybody would.

3 Q. Well, it wasn't locked, right?

4 A. Correct.

5 Q. Anybody could have walked by and looked
6 through it at any time?

7 A. I suppose.

8 Q. And you said it's not probable that those
9 documents came from the bag under your desk, but
10 it's possible?

11 A. I would be very surprised.

12 Q. Did you ever take an inventory of what was
13 in the bag?

14 A. No, ma'am.

15 Q. And have you read the documents that are
16 Mr. Rodriguez' personal items? Have you read
17 through them at this point?

18 A. In their entirety?

19 Q. Any portion?

20 A. I've read through what I could this week.

21 Q. Pieces of it?

22 A. Correct.

23 Q. Do you agree with me that there are
24 documents in there, that Mario Rodriguez writes he
25 wanted to become a leader of the SNM?

1 A. I didn't see that.

2 Q. Are there documents in there that say
3 Mario Rodriguez was trying to advance his status or
4 improve his position within the SNM?

5 A. I don't believe so; at least, not to my
6 knowledge.

7 Q. Are there documents in that bag in which
8 Mario Rodriguez, in his own writing, acknowledged
9 that he was required to register as a sex offender?

10 A. I don't know.

11 Q. Do you know that he testified at about
12 this trial, upon the Government examination, that he
13 didn't know he had to register as a sex offender?

14 A. Again, ma'am, I don't know what he
15 testified to.

16 Q. But do you know whether there are
17 documents in that bag in which Mario Rodriguez, in
18 his own writing, admits that he raped an inmate in
19 the county jail, the Grant County jail?

20 A. I didn't read that, but if you know where
21 they're at, you could put it up on the exhibit
22 monitor.

23 Q. So you don't know whether there's
24 documents in there where he admits that he raped a
25 guy in the Grant County jail?

1 A. No, ma'am.

2 Q. Do you know whether he was asked about
3 that at this trial?

4 A. No.

5 Q. Do you know whether he denied personally
6 raping the individual at Grant County jail?

7 A. Ma'am, I'll consistently tell you: I
8 don't know what he testified to.

9 Q. I want to mark another exhibit. What's
10 our next in order? N? So showing you what's been
11 marked as Defendants' Exhibit N, is this one of the
12 documents you read?

13 A. I don't know.

14 Q. Do you know that Mario Rodriguez committed
15 sort of a high-profile assault on a correctional
16 officer?

17 A. No, I don't.

18 Q. That was on TV?

19 A. I did not.

20 Q. In this letter -- I guess you have to read
21 it. Do you want me to come up there with it so you
22 can read it, or can you read it off the Elmo?

23 A. Do you want me to read the whole page or
24 just a specific section?

25 Q. Why don't you start with where you can

1 see, "He asked me my name." Just read it to
2 yourself through the highlighted portion.

3 A. Where are we? Oh, at the top. Okay.
4 Okay.

5 Q. So you would agree that this writing
6 purports to be a rehash of a conversation between
7 Mario Rodriguez and another prison inmate, right?

8 A. I don't know what it is, ma'am. The stuff
9 that I saw was pretty creative in nature. But,
10 yeah, I guess this looks like a story about a
11 conversation.

12 Q. And about a conversation about assaulting
13 some member of law enforcement, right?

14 A. Yes.

15 Q. And he brags, doesn't he, that he told
16 every detail of this assault on a law enforcement
17 officer with adrenalized pride?

18 A. Is that what that says?

19 Q. Looks like he had a problem with the
20 spelling.

21 A. I don't know if I'd use the word "brags,"
22 but he wrote that. Or it looks like he wrote that.

23 Q. What do you think "adrenalized pride"
24 means?

25 A. I have no idea.

1 Q. I have another exhibit. Can that be O.
2 Thank you. Now, do you know whether Mario Rodriguez
3 was asked questions during this trial about his
4 ability to manipulate the prison system in the State
5 of New Mexico?

6 A. Consistently, ma'am, I don't know what he
7 testified.

8 Q. Would you agree with me that to the extent
9 that someone has the ability to manipulate the
10 prison system within the State of New Mexico, that
11 might be a relevant fact in assessing their
12 credibility?

13 A. Could you rephrase? That was long.

14 Q. Do you think if somebody had the ability
15 to manipulate correctional officers in the
16 correctional establishment, that might be relevant
17 to an assessment of their credibility?

18 A. I suppose.

19 Q. Well, this is a case where the crimes
20 occurred in prison, right?

21 A. Correct.

22 Q. And the witnesses were all in prison,
23 right?

24 A. I don't know if I'd say -- I don't know if
25 all of them were. But I'll agree with you that

1 there were witnesses in prison.

2 Q. Many.

3 So showing you what's been marked
4 Defendants' Exhibit O, and I just highlighted a
5 portion of this, but does Mr. Rodriguez write about
6 his ability to manipulate the system by, quote,
7 "hatching a plan to make his cell mate PC?"

8 A. I agree with you that that's what that
9 says.

10 Q. And make my cell mate PC means make my
11 cell mate do what?

12 A. I would speculate that that means going
13 into protective custody.

14 Q. To request to go into protective custody?

15 A. Right.

16 Q. And Mario Rodriguez writes here that he
17 did that so he could get his homie as a bunky?

18 A. Yes.

19 Q. What's a bunky?

20 A. I would speculate that that's a cell mate.

21 Q. I have another writing. I'd like to mark
22 it as Defendants' Exhibit P.

23 Agent Sainato, I'm going to ask you to
24 read, I think, the first full paragraph on this
25 exhibit as it's up there on the Elmo. It starts

1 with, "I got a soda pop" -- and read through that
2 paragraph and the next paragraph.

3 A. Okay.

4 Q. And would you agree that this writing
5 concerns an assault that Mario Rodriguez claims to
6 have done on a correctional officer?

7 A. Yes.

8 Q. What did he use as a weapon?

9 A. According to this, a can of soda in a
10 sock.

11 Q. In a sock. And he hit the correctional
12 officer in the face, right?

13 A. In the head, I think is what it said. But
14 yes.

15 Q. In this writing, he refers to -- he said,
16 "I should have used the lock in the sock and drank
17 the pop. But then again, with the damage I did with
18 the pop, maybe I'm lucky I didn't. The soda pop
19 exploded at first contact, detaching Officer
20 Griego's retina, and destroying his vision forever."

21 Would you agree with me that's what he
22 wrote?

23 A. Yes.

24 Q. Does that seem to be bragging about his
25 assault on a correctional officer?

1 A. Certainly recounting it.

2 Q. And recounting it in a way that he's
3 saying that that was a good use of the soda pop?

4 A. That's speculative, but yes.

5 Q. Well, he writes, "I should have used the
6 lock in the sock and drank the pop. Then again,
7 with the damage I did with the pop, maybe I'm lucky
8 I didn't"?

9 A. Is there a question?

10 Q. Well, doesn't that sound to you like
11 bragging? Maybe I'm lucky I didn't because look at
12 what I accomplished? Isn't that what he's saying?

13 A. I'll agree with you.

14 Q. And I want to show you one more writing
15 from Mr. Rodriguez. We'll mark this Defendants'
16 Exhibit Q. Again, I'm going to ask you to look at
17 the highlighted portion. Why don't you read for us
18 what Mr. Rodriguez wrote in this writing, if you
19 can.

20 A. "I am in constant need for conflict
21 and" -- I can't make that one out.

22 Q. "Enemies."

23 A. "Enemies. Otherwise, I wage war upon
24 myself."

25 Q. And do you know that part of the defense

1 in this trial is that Mr. Rodriguez, in fact,
2 initiated the murder of Javier Molina?

3 A. No, I don't know that.

4 Q. And do you think a person who is in
5 constant need for conflict and enemies might be
6 someone who is -- that that information might be
7 important for somebody assessing whether Mr.
8 Rodriguez initiated the attack on Mr. Molina?

9 A. Ma'am, are you representing all of these
10 as if they came from a journal? Some of these came
11 from songs, creative stories. I don't know the
12 context of this specific statement.

13 Q. But you had these documents for seven
14 months, right?

15 A. Under my desk, but yes, ma'am.

16 Q. So you could have read them, right?

17 A. Had I known that I had them. And in
18 hindsight, I wish I had read them.

19 Q. And you could have gone and talked to
20 Mario Rodriguez, your witness, and asked him about
21 these writings, right?

22 A. Again, had I known that I was in
23 possession of them. And as I started to say, in
24 hindsight, I wish that I had recalled and had gone
25 through them more thoroughly when I first took

1 custody of them.

2 Q. So you want us to believe that when you
3 found out that Mr. Rodriguez was a government
4 witness, sometime after October 24, 2017, you didn't
5 remember you had a sack of his property under your
6 desk?

7 A. You can believe whatever you want, ma'am.
8 I'm telling you the truth.

9 MS. JACKS: Your Honor, I have some
10 questions regarding the interview with Mr. Urquizo.
11 But at this point I'd like to break with this
12 witness and call Mr. Beck to the stand. I think
13 they've had time to confer with counsel.

14 THE COURT: What's the Government's
15 position on those two requests?

16 MS. ARMIJO: Your Honor, the United States
17 is still -- the Touhy requests have to go up the
18 chain, and it's still being considered, but we do
19 need time. In reference to Ms. Jacks' motion, we
20 are requesting time to respond to it. Because she
21 doesn't cite any Tenth Circuit law. The outrageous
22 Government conduct we feel does not apply to this
23 case. And I can cite to her motion -- I can cite a
24 case for the Court.

25 In addition to that, we don't believe that

1 Matt Beck -- the Touhy letter, by the way, was for
2 Castellano and Beck, as well. But there is no
3 reason why Mr. Castellano should even be involved in
4 it.

5 Additionally, we believe that the
6 witnesses should be the agents. But if you're
7 asking specifically if we're ready to respond to the
8 Touhy request, we are not.

9 THE COURT: All right. Well, I don't
10 think I can compel them at the present time to be
11 witnesses. I still think that one way to maybe
12 resolve this is just to allow them to proceed as
13 attorneys and discuss any questions. They've always
14 answered fully any questions about their production.
15 And it seems to me that would be a better way to go
16 than trying to get them under oath. But if you want
17 to pursue that route, then I think we need to
18 continue to ask these witnesses questions, so we can
19 figure out how to get back to the trial.

20 MS. JACKS: If I can just have a moment?

21 THE COURT: You may.

22 MS. JACKS: Your Honor, I'm informed by
23 Ms. Duncan that she has some limited recross or --
24 yeah, redirect, based on the questions that I asked
25 regarding Ms. Lovelace.

1 THE COURT: Well, y'all are still on
2 direct. So do you want --

3 MS. JACKS: Maybe I'll defer to her on
4 that topic, and then we'll proceed with the next
5 subject area with this witness.

6 THE COURT: Okay. All right. Ms. Duncan,
7 I consider y'all still on direct, so if you have
8 questions, go ahead.

9 MS. DUNCAN: I'll be very brief, Your
10 Honor.

11 THE COURT: Ms. Duncan.

12 MS. DUNCAN: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. DUNCAN:

15 Q. Agent Sainato, I just wanted to follow up
16 on the questions Ms. Jacks asked you about Robin
17 Martinez, a/k/a Robin Lovelace. You indicated that
18 you weren't aware there was an FBI investigation of
19 Robin Lovelace in connection with the SNM?

20 A. Doesn't sound familiar. It's definitely
21 not something I handled.

22 Q. Okay.

23 MS. DUNCAN: If I could approach. For the
24 record, I'm showing the Government what's been Bates
25 numbered as 41172.

1 THE COURT: Why don't you see who's behind
2 that door.

3 THE CLERK: It's from the clerk's office,
4 but the jury is all here.

5 MS. DUNCAN: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MS. DUNCAN:

8 Q. I'm showing you what's Bates numbered
9 DeLeon 31516.

10 A. Okay.

11 Q. Do you recognize that document, Agent?

12 A. My name is on it, but I don't recall
13 writing that.

14 Q. Do you recall working with Eric Duran to
15 make recordings of defendants in this case and also
16 drug buys on the street?

17 A. Recordings, yes. I recall only one drug
18 buy.

19 Q. Were you involved in that, arranging for
20 Mr. Duran to be able to call people on the street
21 and then introducing undercover agents to those
22 people?

23 A. I was involved in the operations, not in
24 the logistics of setting that up.

25 Q. Do you have any doubt that you wrote this

1 report, Agent Sainato?

2 A. No, ma'am.

3 MS. DUNCAN: Your Honor, for the record, I
4 would like to mark this as an exhibit to the
5 hearing. I don't know what we are. Exhibit R.

6 Q. Agent Sainato, this report documents
7 contact between Eric Duran and a Robin Lovelace,
8 correct?

9 A. I think it did, yes.

10 Q. And it was -- the contact was about buying
11 drugs from Ms. Lovelace; correct?

12 A. I no longer have it in front of me.

13 Q. Oh, I can give it back to you.

14 A. Wow. I really don't remember this, but
15 yes, that's what it says.

16 Q. And according to your report, Mr. Duran
17 introduced an undercover employee to Ms. Lovelace
18 via telephone; correct?

19 A. That's what my report says, yes.

20 Q. And you had identified that Ms. Lovelace
21 was not a member of the SNM Gang; however, she was
22 believed to sell drugs to gang members, correct?

23 A. Again, yes.

24 Q. And ultimately, the Government did not
25 pursue this undercover drug deal with Ms. Lovelace;

1 correct?

2 A. I don't believe so.

3 Q. And are you aware that Mr. Duran alleged
4 that he learned of Ms. Lovelace's ability to sell
5 him drugs through Timothy Martinez?

6 A. I'm sorry. Can you say that one more
7 time?

8 Q. Sure. Were you aware that Mr. Duran
9 learned of Ms. Lovelace's ability to supply him with
10 drugs from Timothy Martinez?

11 A. No, ma'am.

12 Q. If I could get that back. Did you
13 participate in any of the interviews with Mr. Duran
14 in 2015?

15 A. I don't recall off the top of my head.

16 Q. Do you recall ever participating in an
17 interview in which Katherine Brusuelas was also
18 present?

19 A. What date was that?

20 Q. That would be May 20, 2015.

21 A. I didn't get to Albuquerque until July of
22 2015, so that was prior to my graduating the FBI
23 Academy.

24 Q. Fair enough.

25 MS. DUNCAN: Your Honor, at this time I

1 move the admission of Defendants' Exhibit R.

2 THE COURT: Any objection, Mr. Castellano?

3 MR. CASTELLANO: I'm sorry. May I see the
4 document?

5 THE COURT: It's R.

6 MR. CASTELLANO: No objection, Your Honor.

7 THE COURT: Anybody else have any
8 objection?

9 MS. JACKS: No.

10 THE COURT: Not seeing or hearing any,
11 Defendants' Exhibit R, hearing Exhibit R, will be
12 admitted into evidence.

13 (Defendants' Exhibit R admitted.)

14 MS. DUNCAN: Your Honor, I have no further
15 questions.

16 THE COURT: Thank you, Ms. Duncan.

17 Ms. Jacks, do you wish to continue your
18 examination?

19 MS. JACKS: I do, Your Honor.

20 THE COURT: Ms. Jacks.

21 MS. JACKS: Before I move on, I'll go
22 ahead and move in the exhibits that I marked and
23 questioned the witness about, which is I think M
24 through Q.

25 THE COURT: Any objection to those, Mr.

1 Castellano?

2 MR. CASTELLANO: No, Your Honor.

3 THE COURT: Any objection from anybody
4 else? Not seeing or hearing any, Defendants'
5 Exhibits for the hearing M, N, O, P, and Q are
6 admitted into evidence.

7 (Defendants' Exhibits M, N, O, P, and Q
8 admitted.)

9 MS. JACKS: At this point, I have two
10 exhibits that I'd like to mark. One is an FBI 302,
11 January 22, 2018. And the other is an attachment to
12 an email that was sent to me last night, that was
13 identified as Agent Stemo's notes from that meeting.
14 It's a four-page document, Bates stamped 54285
15 through 54288. What are our next two? So the 302
16 will be S, and the notes will be T.

17 THE COURT: Any objection to those,
18 Mr. Castellano?

19 MR. CASTELLANO: Your Honor, I was
20 speaking to Ms. Bhalla. She had some questions for
21 me. Can I see the documents real quick?

22 MS. JACKS: Sure.

23 MR. CASTELLANO: I didn't hear what was
24 said.

25 MS. JACKS: And may I approach the

1 witness, Your Honor?

2 THE COURT: Yeah. Did you have a position
3 on those, Mr. Castellano?

4 MR. CASTELLANO: No objection, Your Honor.

5 THE COURT: All right. Anybody else have
6 any objection? Not hearing any, Defendants'
7 Exhibits S and T will be admitted into evidence.

8 (Defendants' Exhibits S and T admitted.)

9 MS. JACKS: Thank you. I'm just going to
10 give them to the witness so that he can refer to
11 them if he needs to while he's testifying.

12 THE WITNESS: Thank you, ma'am.

13 THE COURT: Let's talk a second about the
14 jury. The jury has all returned. I guess I'm
15 increasingly concerned about the delay in this
16 trial. What is the proposal about kind of what
17 we're doing and where we're going, Ms. Jacks?

18 MS. JACKS: Well, Your Honor, I thought
19 what we were doing is having an evidentiary hearing
20 regarding the two issues about the Government's
21 failure to disclose; the first being the
22 900-whatever pages that were allegedly --

23 THE COURT: Well, here's somewhat my
24 problem, is I thought that what we were going to do
25 is y'all were going to use this opportunity to do

1 some discovery, so that y'all could prepare to then
2 decide what to do with these exhibits in the trial.
3 I don't have a feel that's what's going on here. So
4 we've kind of gone two hours with what I think was
5 what everybody considered the minor witness on this,
6 and I feel like something else is going on here, not
7 discovery.

8 MS. JACKS: I don't know that I can answer
9 for everyone. I thought this was a motion to
10 determine the extent -- the reason, the extent, and
11 nature of the Brady violation that we've alleged
12 with respect to Mr. Sanchez.

13 THE COURT: The questioning has not been
14 extremely helpful to the Court on that aspect.

15 MS. JACKS: What I'd like to do is proceed
16 with this witness.

17 THE COURT: How long do you expect to take
18 with this witness?

19 MS. JACKS: Twenty minutes, depending on
20 his memory.

21 THE COURT: Then what are we going to do?

22 MS. JACKS: Call Agent Stemo.

23 THE COURT: And how long is that going to
24 take?

25 MS. JACKS: I would estimate approximately

1 the same.

2 THE COURT: Twenty minutes?

3 MS. JACKS: On this issue, yes.

4 THE COURT: Does everybody think we can
5 have the jury back in here in 45 minutes?

6 MS. DUNCAN: Your Honor, I know that we
7 don't plan to question Agent Sainato about the
8 report Ms. Jacks is going to question him about. We
9 would have some questions for Agent Stemo. I'm
10 guessing maybe ten minutes. We're not going to
11 repeat anything that Ms. Jacks does, obviously.

12 THE COURT: Is that in addition to her
13 estimate of 45 minutes?

14 MS. DUNCAN: So ten minutes in addition to
15 her estimate.

16 THE COURT: What's your thoughts, Mr.
17 Castellano?

18 MR. CASTELLANO: Cross-examination is
19 going to add time, as well. I'd say at least 20
20 minutes.

21 THE COURT: Well, if I bring the jury back
22 in at 8:30 in the morning, can I have a commitment
23 from everybody that we're going to be done with this
24 hearing?

25 MS. JACKS: At least with the witnesses

1 that are presently here. I'm still requesting to
2 call Mr. Beck. And according to the documents, Mr.
3 Castellano was present as well. So depending on
4 what develops this afternoon, I may still be seeking
5 to call him at some point tomorrow.

6 THE COURT: What do you think the chances
7 are you're going to be allowed by DOJ to testify in
8 this case, Mr. Castellano? Mr. Beck? Ms. Armijo?

9 MR. CASTELLANO: May we have a moment,
10 Your Honor?

11 THE COURT: You may.

12 MS. ARMIJO: Your Honor, I think that the
13 issue is whether or not the testimony is necessary,
14 and that's the analysis that our office is currently
15 going through, running up the chain. Our position
16 is that for a Brady-Giglio violation, either AUSA's
17 testimony is not necessary. And it certainly
18 doesn't apply for outrageous Government conduct.
19 And that's what we would put in a written response.
20 But we certainly feel that their testimony is not
21 necessary, and that's something that -- why it's
22 taking time, and they're going through the analysis
23 right now.

24 THE COURT: Do you think it's likely in
25 the morning, since I'm unfamiliar with this kind of

1 scenario, do you think it's unlikely that Mr. Beck
2 and Mr. Castellano are going to be released by DOJ
3 to testify in this hearing?

4 MS. ARMIJO: I would assume so, based on
5 the case law as we see it and our response to it.

6 THE COURT: So you think if I bring the
7 jury back at 8:30 in the morning, it's very likely
8 the hearing will be concluded and we can begin with
9 the case?

10 MS. ARMIJO: Yes. I don't think that
11 there will be testimony from either AUSA.

12 THE COURT: Well, unless the defendants
13 have strong feelings about this, what I propose is
14 let the jury go, let you have the afternoon to
15 continue to examine the witnesses, and taking the
16 Government's representation, which I don't have any
17 reason to doubt, we'll begin at 8:30 in the morning
18 with taking of testimony.

19 Is it all right if Ms. Standridge just
20 goes back and releases them for the evening?
21 Anybody have an objection to that? And we can
22 continue with our work?

23 MS. JACKS: I have no objection.

24 THE COURT: All right. Is that all right,
25 Ms. Armijo?

1 MS. ARMIJO: Yes, Your Honor, that's fine.

2 THE COURT: Not hearing any other
3 objection, I'm going to have Ms. Standridge just
4 tell them to be back at 8:30 in the morning.

5 MR. CASTELLANO: Your Honor?

6 THE COURT: Yes.

7 MR. CASTELLANO: So we can plan for
8 tomorrow, is the defense requesting witnesses in
9 custody tomorrow being produced so they can continue
10 examination of them; for example, Mario Rodriguez,
11 so we can get the word out?

12 THE COURT: Do you want to get any
13 witnesses here? Any of the defendants want any of
14 those witnesses here tomorrow?

15 MS. JACKS: Your Honor, as I said in my
16 filing, we've made certain tactical decisions with
17 respect to the cross-examination of the Government's
18 witnesses and with respect to the defenses that
19 we're pursuing. And I think to, after six weeks of
20 trial, ask us to, you know, reassess that and start
21 calling witnesses back, it's not going to -- I don't
22 see how that could happen.

23 So the only person I'd be requesting for
24 tomorrow is Agent Stemo, I think, at this point.

25 THE COURT: Well, let me put it this way,

1 and I'll see if the Government would agree with
2 this: If you think that there is any chance that
3 you're going to call in your case any additional
4 witnesses, what I would propose to do is you just
5 tell me. You don't have to tell me you're going to
6 call them. You just have to say you want them here
7 in case you work this afternoon, work tonight, work
8 even tomorrow, and decide that you want to call
9 them.

10 And I think the Government would be
11 willing to just have them here. And if you decide
12 you don't want to call them in your trial, then you
13 don't have to. But if you want them here, they'll
14 be here. I don't think anybody will hold anybody --
15 hold it against anybody if you decide tomorrow you
16 don't want them.

17 Is there anybody that wants anybody?

18 MS. DUNCAN: Your Honor, could we just
19 have a few minutes for the defense to confer?

20 THE COURT: Oh, certainly. Sure, y'all
21 talk.

22 MS. FOX-YOUNG: Your Honor, while we're
23 conferring, I'd just ask for a representation from
24 the Government that all of the agent notes have been
25 produced? We received more of Agent Acee's notes

1 this morning at 9:18 a.m. by email. And it's been
2 kind of a drip, drip, drip of notes. So I don't
3 know if there are going to be more produced, or if
4 this is all of them.

5 THE COURT: Anybody want to respond to
6 that?

7 MR. BECK: Yes. What was requested by Mr.
8 Lowry's motion, which the Court was inclined to
9 grant, either for production to the Court or
10 production to you, we have produced all the notes to
11 the defense responsive to that request.

12 THE COURT: To that motion?

13 MR. BECK: Yes.

14 MR. VILLA: Your Honor, a point of
15 clarification. If we ask that anyone be brought,
16 that does not undo in any way the agreement we have
17 with respect to the Government being done with their
18 rebuttal witnesses?

19 THE COURT: No, I think that still holds.

20 MR. VILLA: Okay.

21 THE COURT: I'm getting an affirmative
22 nod.

23 MS. ARMIJO: Yes, Your Honor.

24 THE COURT: I think at the present time we
25 should assume that the Government has rested both in

1 its case-in-chief and its rebuttal.

2 MR. VILLA: Thank you, Judge.

3 THE COURT: Let me go back to you,
4 Ms. Fox-Young. Mr. Beck's representation, is that
5 sufficient to answer your question?

6 MS. FOX-YOUNG: With respect to Mario
7 Rodriguez, Lupe Urquizo, and Tim Martinez, then it's
8 my understanding that the Government is representing
9 that all the agent notes have been turned over. I'd
10 ask that all the agent notes be turned over for all
11 of the cooperating witnesses in this case. And I'm
12 not sure whether or not that's happened. I'd like
13 representation from the Government as to whether it
14 has.

15 MS. ARMIJO: Your Honor, I think that the
16 notes that have been disclosed are specific to Mr.
17 Lowry's motion that we had initially said -- or the
18 Court had said to give to the Court to review. In
19 lieu of giving it to the Court, we just went ahead
20 and supplied it to the defense. We have not gone
21 after that. We did ask agents to review notes. And
22 so that is what has been produced.

23 THE COURT: Well, I guess at this point,
24 particularly given my review of Agent Stemo's, where
25 you have, if I understand what I have, about

1 two-and-a-half pages of notes and three paragraphs
2 of a 302. And I may not be understanding what I
3 have. So if that's the case, it concerns me that
4 we're looking at agent notes that are extensively
5 longer than the 302s. And so it seems to me that
6 those are going to fall within Jencks statements.

7 And so I guess for the present time, I
8 would -- the witnesses that you have called, I think
9 you need to either produce, or if you disagree with
10 where I have drawn the line, and want me to review
11 it, produce the notes of the agents. Because I
12 would consider those to be Jencks statements. And I
13 think that what had been produced today, if I
14 understand what I have, seems to confirm the reason
15 that I have required agent notes in the past.

16 So I know it wasn't within the scope of
17 what Mr. Lowry requested, but let's see if there is
18 anything further that needs to be produced. I'll so
19 order that.

20 MS. ARMIJO: All right, Your Honor. And
21 just so we're clear, it's as to the cooperating
22 witnesses that have testified. And we will make
23 that inquiry.

24 THE COURT: It would be the agents' notes
25 of their interviews or meetings with your witnesses

1 that haven't been produced to date.

2 MS. ARMIJO: Okay. Thank you, Your Honor.
3 We'll get on that.

4 MR. LOWRY: Your Honor, can I have a point
5 of order on this, that I don't disagree with
6 Mr. Beck. I went through with the production, and
7 as far as can I tell, all the FBI agent notes
8 relevant to those interviews have been produced.
9 But I'd also ask that the task force officers that
10 were associated with those interviews have their
11 notes be produced.

12 And I know that the Court, early on, made
13 a finding that the Department of Corrections was
14 within the realm of the prosecution agency of the
15 Department of Justice for the purposes of this
16 trial. And I don't know that Adam Vigil or
17 Christopher Cupit took notes. But I'd like the
18 Government at least to make due diligence to inquire
19 and see if they did.

20 THE COURT: Cupit and who?

21 MR. LOWRY: It was Captain Cupit.

22 MR. BECK: We included -- I mean, as a
23 task force officer, we include them as FBI, so we
24 did make inquiry as to his personal notes.

25 THE COURT: So given Mr. Lowry's

1 representation, it doesn't sound like you expect to
2 produce any more documents; am I correct?

3 MR. BECK: I don't think so. I don't know
4 about Adam Vigil. He was a task force officer, but
5 I don't think he attended any of those.

6 MR. LOWRY: Well, Adam Vigil was at the
7 initial interview with Lupe Urquizo on February 24,
8 2017.

9 MR. BECK: We'll make inquiry.

10 THE COURT: Okay. Does that --

11 MR. LOWRY: Yes.

12 THE COURT: -- given what you know, and
13 what you have, we're in good shape now?

14 MR. LOWRY: Yes, Your Honor.

15 THE COURT: And are you satisfied, Ms.
16 Fox-Young, as well?

17 MS. FOX-YOUNG: Yes, Your Honor. Thank
18 you.

19 THE COURT: Did y'all reach a decision as
20 to whether you want the Government to have anybody
21 here tomorrow, just in case you want to call them,
22 Ms. Jacks?

23 MS. JACKS: Your Honor, we have not
24 reached a consensus. I think maybe some of the
25 testimony this afternoon may help us do that.

1 THE COURT: Okay. Can y'all wait a little
2 bit and see?

3 MS. ARMIJO: Yes. I know that Corrections
4 usually requires that we tell them by 4:00, so we
5 would probably need to know sooner rather than
6 later, because they have to come up with operation
7 plans. And we also have to notify the marshals.
8 I'm not as concerned with the Marshal's office, but
9 Corrections does need to come up with an operations
10 plan to bring people, especially because they're not
11 expecting to.

12 THE COURT: Well, let me ask the
13 Government this: What do you think about just
14 bringing those people that you think may end up
15 being witnesses here? And if the defendants need
16 them, they can use them; and if they don't, they can
17 take them back tomorrow. What would you think about
18 that, since we're at 4:15?

19 MS. ARMIJO: We could go ahead and try to
20 figure out who it is that they may. But if at the
21 end of the day they could please let us know, then
22 we can cancel it or --

23 THE COURT: Okay. Could we do that, Ms.
24 Jacks? They'll go ahead and make arrangements to
25 get the people here, but if you decide that you

1 definitely know you don't want them, you'll tell
2 them, so they can cancel them?

3 MS. JACKS: I think that sounds workable.

4 THE COURT: Okay. Does that work, Ms.
5 Bhalla?

6 MS. BHALLA: Yes, Your Honor.

7 THE COURT: All right. So we'll go that
8 way.

9 All right. Let's see. We have Mr.
10 Sainato on the stand. I think you wanted to
11 continue the questioning, Ms. Jacks?

12 MS. JACKS: I do, Your Honor. And I want
13 to move to the interview of Lupe Urquizo on January
14 22nd.

15 REDIRECT EXAMINATION

16 BY MS. JACKS:

17 Q. So Agent Sainato, you have Exhibits S and
18 T up there, right?

19 A. Yes, ma'am.

20 Q. So let me ask you a few just preliminary
21 questions. Did you participate in an interview of
22 government witness, Lupe Urquizo, on January 22,
23 2018?

24 A. I did.

25 Q. And who else was present during that

1 interview?

2 A. It was Mr. Beck, Mr. Urquizo's attorney
3 whose name is Camunez -- I can't remember
4 specifically her last name. And then I believe Mr.
5 Castellano was in and out during that interview.

6 Q. And what about FBI Agent Nancy Stemo?

7 A. She was not present.

8 Q. Can I ask you to take -- there is a 302
9 prepared regarding that particular meeting; correct?

10 A. Looks like Exhibit S is that 302.

11 Q. Is that the 302 that was prepared in
12 connection with that interview of Mr. Urquizo?

13 A. I believe so, yes.

14 Q. Well, is there something I can do to help
15 you be more certain?

16 A. Give me a second to read it.

17 Q. Please.

18 A. Yes, ma'am, that is it.

19 Q. Who authored that 302?

20 A. Agent Stemo did.

21 Q. So that would mean that she was present
22 during the meeting, right?

23 A. No, she was not. She wrote the report.

24 Q. So Agent Stemo wrote a 302 regarding an
25 interview with Mr. Urquizo that she did not

1 participate in?

2 A. Off of my notes, yes, ma'am.

3 Q. So you took notes during the interview?

4 A. Yes, ma'am.

5 Q. So should it be your name at the bottom?

6 Should your name be included on the 302?

7 A. This is the first I'm seeing it. And it
8 looks like she just listed FBI personnel. So my
9 name is not on there.

10 Q. And your name is not on the line for the
11 person who authored it, is it?

12 A. No, ma'am.

13 Q. How did you take notes during the meeting
14 with Mr. Urquizo on January 22, 2018?

15 A. On my laptop. I type them.

16 Q. And looking at what's been marked as
17 Defendants' Exhibit T, the four-page document, does
18 that appear to be the notes that you're now saying
19 you took on January 22, 2018?

20 A. Yes.

21 Q. And do you know that those were provided
22 to us last night with the representation that they
23 were taken by Agent Stemo?

24 A. No, I did not.

25 Q. So how long is the 302 that Agent Stemo

1 prepared in regards to that meeting with Mr.
2 Urquizo?

3 A. It's approximately a page.

4 Q. Not even a whole page, right?

5 A. Correct, four paragraphs.

6 Q. Four paragraphs, about two-thirds of the
7 page?

8 A. Yes.

9 Q. And your notes are four pages of
10 single-spaced typing?

11 A. Yes, ma'am.

12 Q. Now, I want to discuss some questions
13 about the interview with Mr. Urquizo on January 22,
14 2018. During that interview, did Mr. Urquizo talk
15 about the Molina homicide?

16 A. He did.

17 Q. And during that interview, did he talk
18 about what happened once he got to Southern New
19 Mexico Correctional Facility?

20 A. May I refer to my notes?

21 Q. Sure. Do you want to take a minute to
22 look through your four pages of notes before I ask
23 you these questions?

24 A. If you could zero me in on what spot
25 you're talking about, it would expedite it, or I

1 could read them in their entirety.

2 Q. Agent Sainato, you knew you were going to
3 be called to testify about this interview?

4 A. No, ma'am. I was under the impression I
5 being called to testify about the Rodriguez
6 property.

7 Q. Let me give you a minute. Or why don't
8 you take some time to review the notes and the 302,
9 and let me know when you're ready to answer
10 questions.

11 A. Okay.

12 Q. Thank you.

13 A. Thank you.

14 Q. So I'm going to ask you some questions
15 about what Mr. Urquizo told you regarding the things
16 that happened at Southern New Mexico Correctional
17 Facility after he got there on March 6.

18 A. Okay.

19 Q. And if you need to refer to your notes,
20 just let me know.

21 A. Okay.

22 Q. So first of all, during that interview did
23 Mr. Urquizo tell you that when he got down to
24 Southern New Mexico Correctional Facility there was
25 no property officer on duty?

1 A. I just read that in my notes, yes, ma'am.

2 Q. Well, do you have a recollection of it,
3 other than having just read it in your notes?

4 A. So this was a pretrial interview, and it
5 was being led by Mr. Beck. And I was taking notes
6 as quickly as I could. So my recollection of what
7 was actually said is going to be spotty. But I took
8 pretty detailed notes. So I would represent that
9 whatever is on the notes is what was discussed.

10 Q. Okay. You'll agree with me that the notes
11 are substantially longer than the 302?

12 A. Yes.

13 Q. And you were basically taking
14 contemporaneous notes on your laptop as Mr. Beck was
15 conducting the interview?

16 A. Yes.

17 Q. And were you writing things down in your
18 notes that were not said?

19 A. No, ma'am.

20 Q. You were writing things as they were said?

21 A. Correct.

22 Q. So when you testify today, you're
23 testifying just from your notes? Or you're
24 testifying from your notes and your memory of the
25 interview?

1 A. Mostly the notes, ma'am. If there is
2 something I remember specifically from that
3 conversation, I'll let you know.

4 MS. JACKS: Your Honor, again, I'm going
5 to renew my -- the other two witnesses to this
6 conversation are the prosecutors, Mr. Beck and Mr.
7 Castellano. And I'm again going to move for their
8 exclusion. If this agent is only testifying about
9 what's in his notes, then those are really the only
10 two witnesses that can testify about what was
11 actually said. And for them to -- I just think it's
12 improper for them to be getting a preview of what
13 the testimony is, and hear the testimony of each
14 other.

15 THE COURT: Well, I'm going to deny the
16 request. I think they're attorneys, and I'm going
17 to have to accept their representations and
18 truthfulness to try to determine these issues.

19 MS. JACKS: And you certainly understand
20 Mr. Sanchez' position, that while they're attorneys,
21 they're attorneys that held on to notes that
22 certainly appear to be on their face exculpatory for
23 over a month, and didn't present them to the defense
24 until 22 days after the witness' testimony was
25 completed in this trial.

1 THE COURT: Well, it seems to me that all
2 the evidence I've heard this afternoon has been to
3 the contrary; that they weren't aware of anything
4 that -- here until this weekend. So I can't agree
5 with you that what you said there is --

6 MS. JACKS: Well, I'm assuming what the
7 Court --

8 THE COURT: -- that the attorneys held on
9 to the notes. I haven't heard anything.

10 MS. JACKS: Well, in my motion to dismiss,
11 what I represented is these notes, which are now
12 Exhibit T, were presented to us last night. They're
13 notes from a meeting with Mr. Urquizo on January 22,
14 2018, as this witness just testified. And the notes
15 on their face are exculpatory. As I filed --

16 THE COURT: I understand your position.

17 MS. JACKS: Okay. Thank you.

18 THE COURT: I misunderstood what you said.

19 MS. ARMIJO: Your Honor, if I may, I have
20 an email from my supervisor. I wanted to inform the
21 Court because it's different than what they
22 previously told me.

23 THE COURT: Okay.

24 MS. ARMIJO: So our position is that we
25 believe that Mr. Beck's testimony is not relevant.

1 Outrageous Government conduct doesn't apply here
2 because the conduct at issue doesn't relate to the
3 creation of the crime or coercion to commit the
4 crimes. And we have a case on that. It's the Dyke
5 case, which is a Tenth Circuit case that I believe
6 was written by now-Justice Gorsuch. The issue is
7 Giglio and the good faith/bad faith of a prosecutor
8 is not relevant to Giglio.

9 If the Court wants to question Mr. Beck on
10 the issue personally, of course, that is preferable
11 to having Mr. Beck testify. And if the Court is
12 still inclined to have -- oh, and here's the cite,
13 718 F.3d 1282. Again, that's 718 F.3d 1282.

14 If, Your Honor, if you're still inclined
15 that you want Matt to testify, and if you ask if our
16 office objects on Touhy grounds, we may then comply.
17 But our position is still that, as I stated before,
18 we don't think it's relevant. And certainly, if the
19 Court has questions for Mr. Beck, the Court can
20 inquire. And that's preferable to testimony.

21 THE COURT: All right. So I don't know
22 how you want to proceed.

23 MS. JACKS: I'm prepared to proceed with
24 the testimony of this witness.

25 The case law that I cited regarding

1 outrageous Government conduct, I'm not alleging that
2 they created this crime. What I'm saying -- and I
3 think the defense -- or the assertion has been a way
4 to challenge any sort of Government conduct that
5 violates the Due Process Clause of the Constitution.

6 So it's my position that, by withholding
7 notes for 22 days after a witness testifies, that
8 appear on their face to be exculpatory, in an effort
9 to gain a tactical advantage at trial is outrageous.
10 And it's just a separate claim on top of the
11 Brady-Giglio violation.

12 THE COURT: All right. Well, go ahead.
13 If you want to proceed with your direct examination
14 of Mr. Sainato, go ahead and do that.

15 MS. JACKS: Thank you.

16 BY MS. JACKS:

17 Q. Agent Sainato, did Mr. Urquizo tell you on
18 January 22, 2018, that when he arrived at Southern,
19 he was put into yellow pod?

20 A. May I?

21 Q. Do you need to refer to your notes?

22 A. I do, ma'am.

23 Q. Okay. I think that would be at page
24 54287.

25 A. Yes, ma'am.

1 Q. And did he also tell you that, as he was
2 on his way to yellow pod, he passed Blue on the way
3 to the pod?

4 A. Again, if I may. I think what I wrote was
5 they passed blue pod on the way in.

6 Q. Okay. I'm sorry. And did he tell you as
7 they passed blue pod, he spoke to Blue, Red, and
8 Jerry Montoya?

9 A. Yes, ma'am.

10 Q. And who is Blue?

11 A. Mario Rodriguez.

12 Q. And who is Red?

13 A. My understanding, Timothy Martinez.

14 Q. And Jerry Montoya?

15 A. Yes.

16 Q. So he told you on his way in, he spoke to
17 those three individuals?

18 A. That's what I wrote, yes, ma'am.

19 Q. Did he tell you then that he spoke to the
20 same three individuals through the door between the
21 pods?

22 A. If I may. I wrote that: Correction
23 officer went into Mr. Urquizo's cell to shake it
24 down. And Urquizo spoke to the trio, referenced
25 Blue, Red, and Jerry Montoya through the door

1 between the pods.

2 Yes, ma'am.

3 Q. Did Mr. Urquizo tell you that Rodriguez
4 asked him if he had the paperwork for Molina?

5 A. Yes.

6 Q. Did Mr. Urquizo tell you on that date that
7 Mr. Rodriguez passed a note under the door which
8 asked about the Molina paperwork?

9 A. That's what I wrote in my notes. I don't
10 remember specifically, but that's what I wrote.

11 Q. Did he also tell you that Rodriguez --
12 that in the note, Rodriguez said he wanted to have
13 Timothy Martinez, Jerry Montoya, and Jerry Armenta
14 do the hit on Molina?

15 A. That's also in my notes, yes.

16 Q. And you were writing what was said while
17 you were in the room?

18 A. Yes.

19 Q. Did Mr. Urquizo tell you the next day
20 Mario Rodriguez sent him a note saying Molina would
21 be hit or killed that afternoon?

22 A. Again, that's what I have in my notes.

23 Q. And, again, you were writing what was said
24 in the room, right?

25 A. Yes, ma'am. I was typing the conversation

1 that was going on.

2 Q. Did Urquizo say again at that time Mario
3 Rodriguez said Jerry Montoya, Jerry Armenta, and
4 Timothy Martinez were going to be tasked with doing
5 the hit?

6 A. Again, that's what I wrote down from the
7 conversation.

8 Q. And did he tell you that according to what
9 Rodriguez told him, it was Daniel Sanchez's job to
10 cover the camera?

11 A. Again, I'll say that that's what's in my
12 notes from the conversation, yes, ma'am.

13 Q. And did he tell you that he showered, got
14 back to his cell, and shortly thereafter he heard
15 noises that made him know that Molina -- the hit on
16 Molina had happened?

17 A. Yes, that's also in my notes.

18 Q. Let me just go back, because I missed a
19 sentence. Prior to Mr. Molina being killed, did
20 Urquizo tell you that he actually took the paperwork
21 and attached a letter to it and slid it under his
22 door to Mr. Herrera?

23 A. Where are we at, ma'am?

24 Q. Back on 54287.

25 A. Where at on the page?

1 Q. The second to the last paragraph.

2 A. Could you repeat the question one more
3 time?

4 Q. Yes. Did Mr. Urquizo tell you that prior
5 to Mr. Molina being killed, that he got paperwork
6 from his property and attached a note to it and slid
7 it under his door to Carlos Herrera?

8 A. I wrote, "Rodriguez passed Urquizo a note
9 under the door which also asked if he had the Molina
10 paperwork or the Montoya paperwork."

11 Q. My question is: Did Mr. Urquizo tell you
12 that the next day, the day after he got to Southern
13 New Mexico Correctional Facility, that he got the
14 paperwork and wrote a letter and attached it to the
15 paperwork and slid it under the door to Carlos
16 Herrera?

17 A. Oh, I'm sorry. The next paragraph. That
18 is what I wrote, ma'am. Again, I was typing. I
19 don't remember. But that is what I wrote from the
20 conversation.

21 Q. Okay. You were in the room and you could
22 here what was said, right?

23 A. Yes, ma'am.

24 Q. And you were writing on your computer what
25 was said during the conversation?

1 A. Yes, ma'am.

2 Q. Did Mr. Urquizo tell you during that same
3 conversation that he got the paperwork back from
4 Herrera before Mr. Molina was killed?

5 A. On the next page?

6 Q. Yes.

7 A. Yes, ma'am, that's in my notes.

8 Q. And did Mr. Urquizo tell you on January
9 22, 2018, that after the murder happened, that he,
10 Mario Rodriguez, David Calbert, Robert Martinez, and
11 Roy Martinez all discussed hitting or killing Daniel
12 Sanchez?

13 A. Yes, ma'am. That's also in my notes from
14 the conversation.

15 Q. And did he tell you the reason they were
16 discussing hitting or killing Daniel Sanchez was
17 because he did not participate in the Molina
18 homicide or even cover the camera like he was
19 supposed to?

20 A. That is what I wrote down, yes, ma'am.

21 Q. And you were writing down what was said
22 during the conversation, weren't you?

23 A. Yes, ma'am.

24 Q. And did Mr. Urquizo also discuss with you
25 that there was some concern about their ability to

1 get to Mr. Sanchez so they discussed killing his
2 brother instead?

3 A. That, I do remember, yes, ma'am.

4 MS. JACKS: May I just have a moment?

5 THE COURT: You may.

6 BY MS. JACKS:

7 Q. Okay. Agent Sainato, I just want to go
8 back over the things that I asked you about, and ask
9 you if that's in the 302 that is Exhibit S.

10 A. Okay.

11 Q. So let's start with: Does the 302 that is
12 Exhibit S, that purports to document this
13 conversation, say that there was no property -- that
14 Urquizo said there was no property officer on duty
15 when he got to Southern?

16 A. Are you asking if that's in the 302?

17 Q. Right.

18 A. No.

19 Q. Does the 302 say anything about him
20 speaking to Blue, Red, and Jerry Montoya as he
21 passed blue pod?

22 A. No.

23 Q. Does it say anything about him speaking to
24 Blue, Red, and Jerry Montoya through the door
25 between the pods thereafter?

1 A. No, ma'am.

2 Q. Does it say anything about Rodriguez
3 asking him about the paperwork for Molina?

4 A. No, ma'am.

5 Q. Does it say anything about Rodriguez
6 passing a note under the door, stating that it was
7 his plan to have Timothy Martinez, Jerry Montoya,
8 and Jerry Armenta do the hit on Molina?

9 A. That is not in the 302.

10 Q. I'm sorry. I didn't hear.

11 A. It's not in the 302.

12 Q. Does the 302 say anything about Mr.
13 Urquizo passing the paperwork, along with a letter,
14 under the door to Mr. Herrera?

15 A. No, ma'am.

16 Q. Does the 302 say anything about Rodriguez
17 sending a letter to Mr. Urquizo, saying that Molina
18 would be hit that afternoon?

19 A. No, ma'am.

20 Q. Does the 302 say anything about Mr.
21 Urquizo telling you that Mario Rodriguez told him
22 Jerry Montoya, Jerry Armenta, and Timothy Martinez
23 were tasked with the hit?

24 A. No, ma'am.

25 Q. Does the 302 say anything about the task

1 that Daniel Sanchez was assigned, to cover the
2 camera?

3 A. No.

4 Q. Does the 302 say anything about the
5 discussion that Mr. Urquizo reported having after
6 the murder with Mario Rodriguez, David Calbert,
7 Robert Martinez, and Roy Martinez about killing Mr.
8 Sanchez?

9 A. No, ma'am.

10 Q. And does the 302 say anything about the
11 discussion, the further discussion about killing Mr.
12 Sanchez, because he did not participate in the
13 Molina homicide or even cover the camera like he was
14 supposed to?

15 A. No, ma'am.

16 MS. JACKS: I have nothing further.

17 THE COURT: Thank you, Ms. Jacks.

18 We kind of broke up the defendants. Did
19 anybody else have any direct that they wanted
20 before -- not seeing any, Mr. Castellano, are you
21 going to conduct the cross-examination of Mr.
22 Sainato?

23 MR. CASTELLANO: I'm starting with the
24 first part of the hearing regarding the box of
25 documents.

1 MS. JACKS: Your Honor, I would object to
2 Mr. Castellano or Mr. Beck questioning Agent Sainato
3 about the conversation with Lupe Urquizo. They're
4 both witnesses.

5 MR. CASTELLANO: That's why I'm starting
6 with the box of documents, Your Honor. This is
7 going to be broken in two pieces.

8 THE COURT: Okay.

9 MR. CASTELLANO: And do we have all of the
10 exhibits? I don't know if I have all of them.

11 MS. JACKS: I think they're stacked up
12 there.

13 CROSS-EXAMINATION

14 BY MR. CASTELLANO:

15 Q. Agent Sainato, let me try to go through
16 these one at a time, starting with Defendants'
17 Exhibit A. Do you know where this document came
18 from?

19 A. I believe it's Agent Acee's notes on
20 briefing the director.

21 Q. So do you recognize these as his notes
22 from his meeting this week?

23 A. Yes, sir.

24 Q. Do you know how these got into the box?

25 A. Not a clue. Actually, I don't believe

1 they were in the box. I think it somehow got mixed
2 in when we were making copies of all the materials.

3 Q. Okay. So Defendants' Exhibit A, can you
4 affirmatively state that this was not part of Mario
5 Rodriguez' property?

6 A. Yes, sir.

7 Q. Let me take that one off. Defendants'
8 Exhibit B. I don't know if you're familiar with the
9 discovery in this case or the state case, but does
10 it look like a summary of what was captured on
11 cameras?

12 A. Yes.

13 Q. And are you aware of the fact that Mr.
14 Rodriguez was charged in the state case first?

15 A. No.

16 Q. And if he was charged in the state case,
17 would it be fair to assume he got discovery from the
18 state case?

19 A. Yes.

20 Q. Given the fact that this document doesn't
21 have a Bates number on it, would it lead you to
22 conclude that he got this from another source?

23 A. I suppose.

24 Q. So if he was in a state case, and they had
25 discovery, then this could be related to the state

1 case?

2 A. Correct.

3 MR. CASTELLANO: Before I go forward, Your
4 Honor, I need to just make the record because I'm
5 not sure the source of this information. I believe
6 Ms. Jacks questioned Agent Sainato about Robin
7 Martinez, also known as Robin Lovelace. I think
8 Mr. Jewkes previously represented --

9 MR. JEWKES: Right here.

10 MR. CASTELLANO: -- previously represented
11 Ms. Lovelace. So I want to make sure we clear up
12 any issues regarding any potential conflicts. She's
13 represented by him previously in that case, which is
14 a wiretap case.

15 THE COURT: Is this a wife? A girlfriend?
16 What is this?

17 MR. CASTELLANO: The Robin Martinez was
18 listed on the numbers that we're going to be talking
19 about here in a second. Actually, let me show you.
20 Defendants' Exhibit C is one of the letters they
21 referred to, which is a letter from -- purportedly
22 from Robin Martinez to Timothy Martinez. And Ms.
23 Jacks asked if Robin Martinez was also known as
24 Robin Lovelace. And my understanding is that
25 Mr. Jewkes represented Ms. Lovelace in the

1 investigation for which they've been asking about.

2 So we don't have to do it today, but I
3 just need to bring it up with the Court that we may
4 need to address that at some point.

5 THE COURT: Okay.

6 MR. JEWKES: Your Honor, if we may?

7 THE COURT: You may.

8 MR. JEWKES: I'd like to get into it
9 today.

10 THE COURT: Well, go ahead and say
11 whatever you want to say on it.

12 MR. JEWKES: Your Honor, I was appointed
13 by the Court in 2015 to represent Ms. Lovelace.

14 THE COURT: Was this a case up here in Las
15 Cruces, or --

16 MR. JEWKES: Yes, sir.

17 THE COURT: A federal case?

18 MR. JEWKES: Yes, sir, Judge Brack,
19 presiding judge, a very large methamphetamine case.
20 My client, Ms. Lovelace, made it clear to me that
21 she didn't want to go to trial. We negotiated the
22 case. She got a fairly lengthy prison sentence.
23 She did not cooperate.

24 About a week or 10 days before this trial
25 started, I got a call from Ms. Armijo, asking me if

1 Robin had given me any information about the SNM
2 case. Prior to that, I was aware or at least I
3 thought she was dating someone in SNM, because I had
4 been warned of that by some other member of the U.S.
5 Attorney's Office, and I believe it was Terry
6 Abernathy; is that correct?

7 MS. ARMIJO: Ms. Abernathy is the one who
8 prosecuted Robin Lovelace. It was a wiretap
9 investigation.

10 MR. JEWKES: At that time I inquired, I
11 believe, of Ms. Abernathy, as to -- because I was
12 concerned as to whether or not there was a conflict,
13 because I told her I represented a defendant who has
14 been indicted in the SNM case. I never got an
15 answer back.

16 So at any rate, about a week or 10 days
17 before jury selection in this case, so that would
18 have been, I'm guessing, mid January, past January,
19 Ms. Armijo asked me what, if anything, Robin had
20 told me about SNM, Timothy Martinez, so on. And I
21 responded, "Nothing," because that's the case. Ms.
22 Lovelace was not particularly interested in talking
23 to me about SNM. All she was worried about was her
24 case.

25 So now, based on the latest document dump

1 we got, I have to ask myself why the Government was
2 so concerned, just before jury selection, about
3 whether or not Ms. Lovelace had given me
4 information. Because it's apparently becoming
5 somewhat apparent that she and Timothy Martinez were
6 fabricating stories, if it's to be believed, what's
7 in that discovery.

8 So I wanted to make that disclosure to the
9 Court. Yes, I did represent Ms. Lovelace. She
10 would not discuss her love life with me or the fact
11 that she was at one time dating an SNM member --
12 well, I take it back. I got kind of a warning from
13 the U.S. Attorney's Office about Ms. Lovelace's
14 relationship, and so I did lecture Ms. Lovelace
15 about getting involved in something like that.

16 Apparently, the US Marshal service was
17 concerned because there were telecommunications
18 between Ms. Lovelace and someone in SNM. And they
19 never would give me his name. It's very apparent
20 now who it was.

21 But anyway, that's the extent of my
22 knowledge about Ms. Lovelace and the SNM.

23 Your Honor, I'll answer any questions.

24 THE COURT: All right. I don't think I
25 have any at the present time. This is all catching

1 me a little cold.

2 MR. JEWKES: I know. I know.

3 THE COURT: All right. Thank you,
4 Mr. Jewkes.

5 Why don't we do this, Mr. Castellano. I
6 need to give Ms. Bean a little break, so why don't
7 we let her rest her fingers, and then we'll resume
8 with your cross-examination of Mr. Sainato.

9 All right. We'll be in recess for a few
10 minutes.

11 (The Court stood in recess.)

12 THE COURT: All right. We got everybody
13 back. Looks like everybody has got a defendant and
14 attorneys. All right.

15 Mr. Sainato, I'll remind you that you're
16 still under oath.

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Mr. Castellano, if you wish to
19 continue your cross-examination of Mr. Sainato, you
20 may do so at this time.

21 MR. CASTELLANO: Thank you, Your Honor.

22 BY MR. CASTELLANO:

23 Q. Agent Sainato, did you know that -- well,
24 even when you had this box, that Robin Lovelace and
25 Robin Martinez were the same person?

1 A. No, sir.

2 Q. I'm showing you Defendants' R. And this
3 is your report at the bottom that says, on September
4 1st: Due to external circumstances, the UCE did not
5 meet Lovelace and the transaction did not take
6 place.

7 Do you remember that?

8 A. Not really, sir. I was maybe a little
9 over a month out of the Academy on that date. I
10 don't -- until I was shown that exhibit, I did not
11 remember that report.

12 Q. Do you recall that the operation was
13 called off because the agents found that she was
14 part of a wiretap investigation?

15 A. No, I did not know that.

16 Q. Actually, let me show you that one more
17 time. It does says: Due to external circumstances,
18 case agents called off that operation?

19 A. Yes, sir.

20 Q. This is Defendants' C, the letter
21 purportedly between Robin Martinez and Timothy
22 Martinez, dated 10/22 of '15. Do you know if you
23 read this letter at all?

24 A. Did I?

25 Q. Yes.

1 A. Not until it was on the screen.

2 Q. So when you had the box of documents, was
3 this something you would have been looking for in
4 terms of correspondence between people?

5 A. No, not specifically.

6 Q. And when you saw the name Monster in
7 there, would you know if that was an a/k/a for
8 somebody or a nickname? Would that have any meaning
9 to you?

10 A. No, I don't know who Monster is.

11 Q. And would you know whether or not Monster
12 was the same person as B, or whether they were
13 different people?

14 A. I don't.

15 Q. So on the next page where it says, "I hope
16 our Monster will keep in touch with us when he
17 leaves," did you know who that was and where he was
18 going?

19 A. No, sir.

20 Q. As far as you can tell, by just glancing
21 at it, does it look like anything more than a letter
22 between two people?

23 A. That's what it looks like on its surface.

24 Q. Turning to Defendants' D, which is
25 purportedly another letter between Robin Martinez

1 and Timothy Martinez, does it have any significance
2 to you that one inmate's mail was in another
3 inmate's property?

4 A. No, sir.

5 Q. Did you know whether that was even a
6 violation of prison rules, or whether it was
7 allowed? What did you know?

8 A. I don't.

9 Q. Were you familiar with any prison rules on
10 whether or not that was permitted?

11 A. No, sir.

12 Q. I'm showing you the first page of that
13 letter. Does it look like anything else, dated
14 10/23 of '15, other than a letter between two
15 people?

16 A. Not on its surface, no, sir.

17 Q. On the second page, which is highlighted,
18 when it says, "Yeah, I would like to know what ole
19 boy had to say, but you already know that his
20 version of the story does not match up to the
21 evidence or to everyone else's statements," did that
22 have any significance to you?

23 A. I don't know what that's referring to, no,
24 sir.

25 Q. So at the bottom where it says, "Why did

1 they move you again, and they left our Monster over
2 there by himself. That's messed up," did you have
3 any idea what that meant or what that referred to?

4 A. No, sir. I don't know who Monster is.

5 Q. The same thing with Defendants' E, another
6 letter between Robin Martinez and Tim Martinez,
7 apparently also dated on 10/23 of '15. Did this
8 appear to you to be anything more than a letter
9 between two people?

10 A. No, sir.

11 Q. And on the next page of that exhibit where
12 it's highlighted, "Tell our Monster" -- and there is
13 something between "B" and "hello." Do you know if
14 that's "Monster" and "B," or if it's just "Monster"
15 and some scribble?

16 A. I don't know.

17 Q. Can you tell whether or not Monster and B
18 are even the same person?

19 A. No, sir.

20 Q. The next page is highlighted. "Let me
21 know if you talk to the attorney. I really want to
22 know."

23 Does that mean anything to you?

24 A. No, sir.

25 Q. On Defendants' F, dated November 19th of

1 2014, if that was a request for documents by Mario
2 Rodriguez, are you aware of whether he was an active
3 SNM member in November of 2014?

4 A. I believe he was.

5 Q. And if he was seeking documents on
6 somebody who had cooperated in the case, would that
7 be consistent with an SNM member trying to figure
8 out who is ratting?

9 A. Yes, sir.

10 Q. And, in fact, wouldn't it be his duty to
11 seek out rats and potentially kill them?

12 A. That's my understanding.

13 Q. Is that inconsistent with SNM membership?

14 A. No, sir.

15 Q. I'll ask the same thing of Defendants' G.
16 Would you be surprised if an active SNM member was
17 seeking out information on other people in other
18 cases?

19 A. No, sir.

20 Q. And seeing a cause number, were you aware
21 of whether or not he was a co-defendant in that case
22 seeking information?

23 A. I don't know what that cause number
24 relates to.

25 Q. And Defendants' I. This is the one where

1 it says at the bottom, "Plus he was scared of me.
2 Even when I was asleep he was scared. One day
3 during court he told me that he couldn't sleep. Why
4 is that?"

5 Was Mario Rodriguez known as a scary guy?

6 A. I don't know.

7 Q. Did you ever hear rumors of him biting
8 people's ears off?

9 A. Yes, sir.

10 Q. Did you know that he had a reputation that
11 was brought up in trial as a scary person?

12 A. No, sir. This is my first time in this
13 courtroom.

14 Q. And so you didn't see a video of him
15 stabbing someone and then biting his ear off; is
16 that correct?

17 A. I have seen a video of him stabbing
18 somebody in a prison facility.

19 Q. And that's pretty scary, isn't it?

20 A. Yes, sir.

21 Q. They marked Defendants' J, but nothing is
22 highlighted. Did that have any significance to you?

23 A. No, sir.

24 Q. And when you initially reviewed the
25 documents, do you know if you even saw this

1 document?

2 A. No, sir, I don't recall it.

3 Q. And Defendants' K, do you know the
4 significance of one inmate having a commissary form
5 with another inmate's name on it?

6 A. No, sir.

7 Q. Do you know if that's a violation of rules
8 or what any of this information means?

9 A. No, sir.

10 Q. And did you know the connection between
11 Mauricio Varela, whose name is on here, and Mario
12 Rodriguez?

13 A. I believe them both to be SNM members.

14 Q. I'm showing you Defendants' H. There are
15 some names highlighted on it, including Jerry
16 Armenta and Jerry Montoya. Did you know those to be
17 SNM Gang members along with Mr. Rodriguez?

18 A. Yes, sir.

19 Q. On this page is also something referring
20 to four directions, north, south, east, west; four
21 seasons; four parts of the day; and four divisions
22 of life. Did that mean anything to you?

23 A. Not before the initial examination when I
24 was made aware of it.

25 Q. And so what's your understanding now of

1 that information?

2 A. That it relates to SNM prose, for lack of
3 a better word.

4 Q. And so if it had something to do with the
5 structure of the organization, would that be
6 consistent with SNM membership?

7 A. Yes, sir.

8 Q. And are you aware of whether Mr. Rodriguez
9 testified about the organization as explained to him
10 by Mr. Baca?

11 A. I don't know what Mr. Rodriguez testified
12 to.

13 Q. Also, on the next page it looks like at
14 the bottom, highlighted, is "Mauricio Varela." Did
15 you see that name a little bit ago on the commissary
16 form?

17 A. Yes, sir.

18 Q. And were you aware of whether or not Mr.
19 Varela was moved out of state after the Molina
20 murder?

21 A. I don't recall specifically.

22 Q. And do you recognize his name as that of
23 another SNM Gang member?

24 A. As far as I know, there is only one
25 Mauricio Varela.

1 Q. So would you be surprised if an SNM Gang
2 member had in his address book names and addresses
3 of other SNM Gang members?

4 A. Not particularly, no, sir.

5 Q. Let me show you another exhibit, which is
6 Defendants' H. Is it basically an address book?

7 A. Yes.

8 Q. So does it have in it tabs and things of
9 that nature consistent with an address book?

10 A. Yes, sir.

11 Q. Now, turning to that exhibit, it does have
12 the name on here, "Honorable Darren Kugler." Did
13 you know that was a state district judge?

14 A. No, sir.

15 Q. Did you know that 201 West Picacho is the
16 address to the State District Courthouse here in Las
17 Cruces?

18 A. Not until I looked it up, but I'm aware of
19 that now, yes, sir.

20 Q. So you're aware that is not a judge's home
21 address, but a business location?

22 A. Correct.

23 Q. Defendants' P. This refers to Mr.
24 Rodriguez, apparently from the writing, hitting an
25 officer in the face with a sock with a soda can

1 inside. Do you see that?

2 A. Yes.

3 Q. Are you aware that he was actually
4 cross-examined on that incident at trial?

5 A. No, sir. Again, I wasn't present.

6 Q. And Defendants' Q says, "I'm in constant
7 need for conflict and enemies. Otherwise, I wage
8 war upon myself."

9 What meaning does that have to you?

10 A. Sounds poetic. I don't know.

11 Q. And, in fact, do the other statements on
12 that page seem somewhat poetic to you?

13 A. Yes, sir.

14 Q. One part says, "to not be dismissed by the
15 gravity of our either lifes or lies"?

16 A. Yes, sir.

17 Q. I don't know what exhibit this is. There
18 is a 149 in the lower left-hand corner of this
19 document. So there is a claim in here that someone
20 was written up for assaults and threats. Would that
21 be consistent with what SNM Gang members do?

22 A. I would say so, yes, sir.

23 Q. Would you be surprised if an SNM Gang
24 member was written up for assaults or threats?

25 A. No, sir.

1 Q. Or for any act of violence?

2 A. No, sir.

3 Q. The same thing with Defendants' N, talking
4 about, "I did every " -- looks like maybe -- "detail
5 with a" -- that's the one that's hard to read --
6 "pride." Does this purport to be some sort of
7 conversation? Does it look like there's a
8 question/answer conversation on this page?

9 A. Yes, sir.

10 Q. Do you know why that is?

11 A. No, sir.

12 Q. And if somebody is proud about committing
13 an act of violence as an SNM member, is that
14 something that surprises you?

15 A. No, sir.

16 Q. The same thing with Exhibit O, referring
17 to, "myself and homie were hatching a" -- can you
18 read that? "A plan to make the other person PC so
19 he could have a homie as his bunky." Would you be
20 surprised if an SNM member bulldogged somebody to
21 get him out of his cell?

22 A. No, sir.

23 Q. Looking at Defendants' L, is this the
24 email you sent as quickly as you could after finding
25 out about the documents?

1 A. Yes, sir.

2 Q. And did you try as best you could to
3 document what happened to the documents, how you got
4 them, and how they were misplaced?

5 A. Yes, sir.

6 Q. Now, when you obtained those documents,
7 did you -- what was the purpose?

8 A. Like I said before, we were made aware
9 that there was property of several SNMers. We took
10 a look at it just to see what was there. Like I
11 said before, it was kind of a nonevent. It was just
12 shoes, books, clothing, hygiene products.

13 The only thing that caught my eye was this
14 stack of documents. So I, instead of standing in
15 the prison facility, going through them, I took them
16 back to my cubicle to go through.

17 Q. And once you had them in your possession,
18 did you know if you had authority to look through
19 the documents of a charged defendant?

20 A. I believe I did.

21 Q. Why did you think that?

22 A. Because it was inmate property.

23 Q. So that was something you thought you did
24 not need a warrant for to search; is that correct?

25 A. Correct. Particularly that we're looked

1 at as the same as Corrections, and they have the
2 authority to do that, as well.

3 Q. Now, you said you were looking for certain
4 documents in legal material. So if you had the
5 document in your hand, how quickly would you look
6 through them to determine if it was something that
7 might be of use to you?

8 A. Like a deck of cards, shuffle through.
9 Maybe a little bit more. But just kind of a quick
10 scan.

11 Q. What is something that you thought would
12 have caught your eye when you reviewed the
13 documents?

14 A. Discovery material, anything that would be
15 described as paperwork.

16 Q. When you say "paperwork," does that have a
17 specific meaning in terms of a case like this?

18 A. Yes, sir.

19 Q. What does that mean?

20 A. "Paperwork" is what I understand the SNM
21 uses to confirm a hit on somebody.

22 Q. There is a discussion here of purportedly,
23 in Defendants' J, about a letter coming from Styx.
24 Do you remember that?

25 A. Yes, sir.

1 Q. And were you aware of the fact that there
2 has been testimony in this case that Styx did have
3 contact with people in the SNM from out of state?

4 A. I don't know what the testimony in this
5 case is.

6 Q. Or that Jake Armijo testified he sent
7 Suboxone to Mr. Archuleta?

8 A. I don't know what Mr. Armijo testified to.

9 Q. Or the fact that somebody called Mr.
10 Archuleta after Julian Romero was assaulted?

11 A. I did not know that.

12 Q. So once you looked through this -- and I
13 understand the Court will use a different standard
14 here -- but once you looked at this, was there
15 anything of significance to you when you looked
16 through the box?

17 A. I did not note anything, no, sir.

18 Q. And as insignificant as it was to you,
19 were you actually going to return these documents
20 and the whole box of material back to the Department
21 of Corrections?

22 A. Yes, sir.

23 Q. Why is that?

24 A. Because that's where it belonged.

25 Q. And so did it have any significance to you

1 once you looked through it?

2 A. No, sir.

3 MR. CASTELLANO: May I have a moment, Your
4 Honor?

5 THE COURT: You may.

6 MR. CASTELLANO: Thank you, Your Honor. I
7 think I'm ready to pass the witness. I just need to
8 check my notes real quick.

9 Do you have a photocopy of the address
10 book? I'm going to mark that as Government's
11 Exhibit 1 for this hearing and move its admission.

12 THE COURT: That's the materials that are
13 in the exhibits here?

14 MR. CASTELLANO: Yes, sir. I will try to
15 find --

16 THE COURT: You're just pulling out the
17 address portion?

18 MR. CASTELLANO: I'm actually introducing
19 the whole book. And it's Defendants' H, and the
20 book. So Defendants' H is a photocopy of the
21 contents of the address book.

22 THE COURT: All right. So Defendants'
23 Exhibit -- are you making it your own?

24 MR. CASTELLANO: Yes. This will be
25 Government's Exhibit 1.

1 THE COURT: Any objection to Government's
2 Exhibit 1 coming into evidence?

3 MS. JACKS: No.

4 MS. DUNCAN: No, Your Honor.

5 MS. BHALLA: No, Your Honor. I think
6 that, you know, what I had spoken to Mr. Castellano
7 about with this particular exhibit, that we may want
8 to redact the Social Security information. I don't
9 know. Because that is contained in the address
10 book.

11 THE COURT: All right.

12 MS. BHALLA: And that's why I waited to
13 move those into admission until we had a chance to
14 look at the redactions. I don't know if the
15 Government still intends to do that or not.

16 MR. CASTELLANO: I think, Your Honor, I
17 don't know if the Court needs to do anything else
18 with this book since the Court has a photocopy of
19 the contents. I just wanted the Court to be able to
20 see the book as is.

21 THE COURT: If you don't have any
22 objection, why don't I admit it, and then if we need
23 to come back and do something, we can.

24 MS. BHALLA: That's fine, Your Honor.
25 Thank you. And if the Government is going to move

1 that into admission, then I can withdraw Defendants'
2 Exhibit H. I think that might be a more legible
3 copy for the Court, in any event.

4 THE COURT: Now, you know you haven't
5 moved --

6 MS. BHALLA: I know. I was waiting, Your
7 Honor, to give Mr. Castellano a chance to review
8 those exhibits for those issues. I was going to do
9 that when he finished with this witness, Your Honor.

10 THE COURT: All right. So I'll admit
11 Government's Exhibit 1, will be admitted into
12 evidence.

13 (Government Exhibit 1 admitted.)

14 MR. CASTELLANO: Thank you, Your Honor.
15 And I don't have any objection to Defendants' H
16 being admitted, as well, if the Court needs to use
17 it for another purpose, since the book, itself,
18 probably will not be -- the contents, itself, may
19 not be part of the record. So it may be a more
20 complete record with the defendants' exhibit, as
21 well.

22 THE COURT: Do you want to go ahead and
23 move your H, Ms. Bhalla?

24 MS. BHALLA: Yes, Your Honor.

25 THE COURT: Any objection to that? Not

1 seeing any, Defendants' Exhibit H will be admitted
2 into evidence.

3 (Defendants' Exhibit H admitted.)

4 MR. CASTELLANO: And with that, I pass the
5 witness.

6 THE COURT: All right. Thank you, Mr.
7 Castellano. Ms. Armijo.

8 MR. CASTELLANO: I pass to Ms. Armijo.

9 THE COURT: All right. Ms. Armijo.

10 MS. ARMIJO: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. ARMIJO:

13 Q. Agent Stemo (sic), I don't know if it's up
14 here. Do you recall sitting in on an interview --
15 well, let me ask you -- let me go back before that.
16 Do you recall the week before trial that you and
17 other agents came into town for the purpose of
18 assisting with pretrial interviews?

19 A. Yes, ma'am.

20 Q. I'm sorry?

21 A. Yes.

22 Q. And was part of that process agents would
23 sit in, and if there was any new information, then
24 agents would then write a 302 for the purpose of
25 disclosure to the defense?

1 A. Yes.

2 Q. And is that the purpose that you sat in
3 the interview with Lupe Urquizo?

4 A. That was my understanding.

5 Q. And --

6 THE COURT: Ms. Armijo, just so I know
7 where I am in this, what is the date of this 302?

8 MS. ARMIJO: Your Honor, I was looking for
9 it.

10 THE WITNESS: Ms. Armijo, I think they're
11 Exhibits S and T.

12 MS. JACKS: Your Honor, it's January 22,
13 2018.

14 BY MS. ARMIJO:

15 Q. All right. And I'm looking at Defendants'
16 Exhibit S. Does this appear to be a 302 written
17 about that meeting with Mr. Urquizo?

18 A. Yes, ma'am.

19 Q. Also present at the meeting, in addition
20 to Matt Beck, was Mr. Urquizo's attorney, defense
21 attorney?

22 A. Yes, ma'am.

23 Q. And was the person that was doing the
24 questioning, was that Mr. Beck?

25 A. Yes.

1 Q. And as a result of the -- and during that
2 interview --

3 THE COURT: Can I ask a question, just so
4 I'm on the right track? When you were saying, Ms.
5 Jacks, that the Government's attorneys had sat on
6 notes for seven months, what were you referring to?

7 MS. JACKS: Well, I think there might be a
8 misunderstanding. The things that were sat on for
9 seven months were the Mario Rodriguez property
10 documents that I think this witness was just
11 questioned about by Mr. Castellano.

12 The report that -- the Lupe Urquizo
13 interview notes were sat on by the Government
14 between January 22nd and last night.

15 THE COURT: So you're withdrawing the
16 statement that the attorneys sat on the Mario
17 Rodriguez box for seven months?

18 MS. JACKS: You're correct, Your Honor. I
19 mean, if I said that, I misspoke. Because it was
20 the FBI that sat on that for seven months, not these
21 attorneys.

22 These attorneys sat on the notes of the
23 Lupe Urquizo interview from January 22nd until
24 February 28th, 22 days after Mr. Urquizo testified.

25 THE COURT: All right, Ms. Armijo. Thank

1 you, Ms. Jacks.

2 Ms. Armijo.

3 MS. ARMIJO: Thank you, Your Honor.

4 BY MS. ARMIJO:

5 Q. And so does this appear to be a 302 that
6 was written by another agent?

7 A. Yes.

8 Q. Yes?

9 A. Yes, ma'am.

10 Q. And in doing so, did you provide that
11 agent with your notes which are Exhibit T?

12 A. Yes, ma'am.

13 Q. And I guess that begs the question, then:
14 Why is it that another agent wrote a 302 based upon
15 your sitting in on the interview?

16 A. My understanding was that I was supposed
17 to take copious notes. I wasn't sure. I'd never
18 done a pretrial interview before. I waited for word
19 from Mr. Beck as to whether or not a 302 needed to
20 be generated. By the time we got word on that, I
21 was out of the office and couldn't write the report
22 myself, so I sent my notes to Agent Stemo to
23 generate the report.

24 Q. So you didn't understand that you were
25 supposed to write a 302, but at some point you were

1 requested by the U.S. Attorney's Office to produce a
2 302?

3 A. Yes, ma'am.

4 Q. And the purpose of that 302 was to provide
5 new information to the defense about possible
6 statements that had not previously been disclosed?

7 A. That's correct.

8 Q. I guess initially you didn't understand
9 that that was the purpose of agents sitting in,
10 potentially?

11 A. I wasn't entirely clear. I just knew I
12 was supposed to take notes on the interview.

13 Q. Okay. And then, when you learned that
14 there was information that needed to be disclosed to
15 the defense, you were out of town; is that right?

16 A. I was out of the office, yes, ma'am.

17 Q. Okay. Out of the office. And so then you
18 tasked Special Agent Stemo with actually taking
19 information from your notes that would be new
20 information that needed to be disclosed?

21 A. Yes.

22 Q. And that's what was done, and that's why
23 we have Agent Stemo writing this, so that it could
24 be disclosed?

25 A. Correct.

1 Q. And the date of this -- it looks like the
2 date it was drafted was 1/28/2018; is that correct?

3 A. Yes.

4 Q. All right. And so did you after -- so you
5 were out of the office, and this was done by Agent
6 Stemo. And then after that, was your understanding
7 that Agent Stemo basically covered what you were
8 supposed to do?

9 A. Yes, ma'am.

10 Q. And I believe you indicated -- and I'm
11 looking at Exhibit T -- going back to Exhibit Number
12 S, were you aware that the U.S. Attorney's Office
13 was diligently trying to get any new information out
14 to the defense?

15 A. I believe so.

16 Q. Would that be the purpose of trying to get
17 a new 302 out -- by 302, a new report out with
18 additional information?

19 A. That would be logical, yes, ma'am.

20 Q. Okay. And is this the first time that
21 you -- when did you start as an FBI agent?

22 A. I graduated the Academy in July, end of
23 July 2015.

24 Q. And then did you come to Albuquerque on
25 your first assignment?

1 A. Yes, ma'am.

2 Q. And so is this case -- was this the first
3 time that you prepared in pretrial interviews, as
4 far as assisting and getting witnesses ready?

5 A. Yes.

6 THE COURT: Ms. Armijo, I think we're
7 going to have to shut her down for the night.

8 MS. ARMIJO: Okay, Your Honor. Thank you.

9 THE COURT: Let me make a couple of
10 comments. One is, remember, I need to see letters
11 from everyone, emails, something about these jury
12 instructions. So you have a clean set. I haven't
13 been able to proof them today because there has been
14 a lot of paper coming at me. So what you have is
15 what I'm taking home tonight, too. So start sending
16 me emails, letters. Tell me what your comments are.

17 I think this issue right here that we've
18 been focused on this afternoon, I think it's going
19 to take too much thought for me to make a very quick
20 decision on whether to grant it or deny it. I'm
21 doing the best I can to absorb a lot of information
22 here. But the chances are, you know, I'm not going
23 to be able to make a very informed decision about
24 materiality, how it affected strategy. I'll listen
25 to the Government as to how much came in through

1 other sources.

2 So I do encourage everybody to work this
3 evening and overnight and in the morning, to come up
4 with curative remedies to moving forward so that we
5 can bring this evidence to a conclusion and get the
6 case to the jury. That doesn't mean this issue goes
7 away. But I do encourage us to focus on the fact
8 that, realistically, I'm not going to do anything
9 hastily on this motion. And so let's really focus
10 on curative remedies and solutions to trying to get
11 the evidence in and bringing the trial to a
12 conclusion.

13 All right. Y'all have a good evening.
14 I'll see you at 8:30 in the morning.

15 MS. JACKS: Your Honor, with that in mind,
16 I would ask that Agent Sainato and Agent Stemo be
17 available tomorrow to testify before this jury.

18 THE COURT: Well, yeah, I think you were
19 planning on them being here, right?

20 MS. ARMIJO: Yes, Your Honor.

21 And if we could know by the defense who
22 they want. I did send a list. I requested three
23 people: Mario Rodriguez, Timothy Martinez, and Lupe
24 Urquizo.

25 Because it was sent after 4:00, they won't

1 be transported until after 8:00. But we would like
2 to know if we need to cancel that.

3 THE COURT: They'll be here pretty early
4 though, right?

5 MS. ARMIJO: Well, without giving their
6 location --

7 THE COURT: Sure.

8 MS. ARMIJO: -- they'll be here in the
9 morning.

10 THE COURT: Okay.

11 MS. ARMIJO: But if they could let us know
12 if they still want us to bring those people, or if
13 they want us to cancel.

14 THE COURT: If you know you don't want
15 them, that's all --

16 MS. JACKS: I do know that I don't want
17 them. This is Jacks, on behalf of Sanchez.

18 THE COURT: You know you don't want them?

19 MS. BHALLA: Defendant Herrera does not
20 want them, either, for the record.

21 MS. DUNCAN: Defendant Baca does not want
22 them.

23 MR. VILLA: We don't need anybody, Your
24 Honor.

25 THE COURT: All right. So you can release

1 those three.

2 Is there anybody that you do want?

3 MS. JACKS: Sainato and Stemo.

4 THE COURT: Okay.

5 MS. JACKS: And a curative instruction,
6 unless the Court grants our motion.

7 THE COURT: When you say "curative
8 instruction," what are you talking about?

9 MS. JACKS: I'll submit a proposed
10 instruction tonight.

11 MS. BHALLA: Just so the Court's aware,
12 I've been working on a proposed instruction, as
13 well. I would like to go ahead and move the
14 exhibits that we talked about in the motion today
15 into evidence.

16 THE COURT: Any objection to A through K?
17 And I think we already have H in.

18 MR. CASTELLANO: No objection, Your Honor.

19 THE COURT: All right. Anybody else have
20 an objection? So A through K, minus H, which is
21 already in, will be admitted into evidence.

22 MS. BHALLA: Thank you, Your Honor.

23 (Defendants' Exhibits A, B, C, D, E, F, G,
24 I, J, and K admitted into evidence.)

25 MR. CASTELLANO: Your Honor, if we rest

1 tomorrow and the instructions are read, are we going
2 to close on Monday?

3 THE COURT: You know, I think that would
4 probably be a good idea.

5 MR. CASTELLANO: Okay.

6 MS. BHALLA: Thank you, Your Honor.

7 THE COURT: Let me just -- if that's where
8 we're going, let me plant a couple of seeds in your
9 mind. It would seem to me, a lot of times -- it
10 would seem to me you would want me to get out of the
11 way tomorrow.

12 And this is the reason: When you take
13 what you requested as closings, it's right at a full
14 day, and you don't need me taking up a bunch of time
15 at the beginning.

16 So I know there has been some requests to
17 try to, as best we can, to have all the closings on
18 a single day. And I know that y'all are wanting,
19 Mr. Villa, to expand a little bit your closings,
20 which will probably make it a long day.

21 And I'm not sure we can do it. I'm not
22 making any promises. But it seems to me it would be
23 wise to get me out of the way tomorrow so that I
24 don't clog up.

25 Because if I go on Monday, somebody is

1 going to get pushed over till Tuesday, with the
2 current schedule. So it would seem to me that it
3 might be in everybody's interests to get me out of
4 the way tomorrow. You have a set for your closings,
5 and then y'all hog all day on Monday.

6 And so does that sound like something to
7 shoot for?

8 MR. VILLA: We don't need you here Monday,
9 Judge.

10 THE COURT: What?

11 MR. VILLA: We don't need you here Monday.

12 THE COURT: I'll be around. I want to
13 watch the show. But that means, really do take a
14 look at these things tonight so I can be working on
15 those in the morning and try to be in good shape for
16 you.

17 MR. LOWRY: Your Honor, on that point, if
18 we have edits, should just we send them to the
19 Court?

20 THE COURT: Yeah, just send them in. If
21 y'all can talk, you need to work out, but the more
22 you can do, the better, so I'll be in good shape in
23 the morning.

24 MR. LOWRY: Thank you, Your Honor.

25 THE COURT: All right. Have a good

1 evening.

2 (The Court stood in recess.)
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3

4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 4th day of February, 2019.

13

14

15 _____
Jennifer Bean, FAPR, RMR-RDR-CCR
16 Certified Realtime Reporter
United States Court Reporter
17 NM Certified Court Reporter #94
333 Lomas, Northwest
Albuquerque, New Mexico 87102
18 Phone: (505) 348-2283
Fax: (505) 843-9492
19 License expires: 12/31/19

20

21

22

23

24

25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com